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While this study was carried out for the European Commission and the Directorate-General for Education and Culture in particular, the views set out and analyses presented are those of the authors and do not necessarily represent the views of the Commission.

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Contents

PROLOGUE	6
INTRODUCTION	7
ART INSURANCE	10
A Liability	10
B Determining the value of a museum exhibit	10
C Depreciation	12
D Risks to which museum pieces are exposed	12
E Significance of the concept of damage	13
F Measures for the prevention of financial loss	13
G Commercial insurance	14
H Non-insurance	15
I State indemnity	15
J Advantages and drawbacks	16
ANALYSIS OF THE SITUATION IN EUROPE	19
A General	19
B Comparative analysis of state indemnity schemes	19
B1 Scheme introduction dates and legal instruments	19
B2 Selection of certain parameters	22
B3 Statistics: Financial risks incurred	32
B4 Functioning of the system and compensation mechanisms	35
C Countries without a state indemnity scheme	38
C1 State indemnity from the lender's point of view	38
C2 Insurance costs	39
C3 Insurance costs covered by a third party	40
C4 Impact of study on knowledge of state indemnity schemes	40
COUNTRY SURVEY REPORTS	41
GERMANY (FEDERAL LEVEL)	42
AUSTRIA	47
BELGIUM	52
BULGARIA	54
CYPRUS	58
DENMARK	60
SPAIN	66
ESTONIA	73
FINLAND	75
FRANCE	81
GREECE	87
HUNGARY	89
IRELAND	93
ICELAND	99
ITALY	101
LATVIA	107

LIECHTENSTEIN	109
LITHUANIA	111
LUXEMBOURG.....	116
MALTA.....	118
NORWAY	122
NETHERLANDS.....	132
POLAND.....	138
PORTUGAL.....	142
SLOVAKIA	144
CZECH REPUBLIC	146
ROMANIA.....	148
UNITED KINGDOM.....	152
SLOVENIA.....	159
SWEDEN	162
SWITZERLAND	168
LEGAL FRAMEWORK	170
A. Article 151 of the TEC	170
A1 Subsidiarity.....	170
A2 Restriction to non-commercial exchanges	172
A3 Co-operation with third countries.....	173
A4 Consideration of cultural aspects in other fields of action – Horizontal clause	174
A5 Contrary interests: Physical conservation of the cultural heritage	175
B State indemnities and Community competition law	175
B1 State indemnities as state aid in the sense of Article 87 of the TEC	176
B2 Compatibility with the Common Market, in accordance with Article 87, paragraph 3, point (d) of the TEC	178
PROPOSALS AND CONCLUSIONS	180
A Proposals relating to legislation	180
A1 Existence, availability and intelligibility of legal regulations	180
A2 Harmonisation of terminology	180
A3 National information centre on the state indemnity scheme in each country	181
A4 Agreements on the choice of applicable law and competent jurisdiction	181
B Improving the movement of works of art.....	182
B1 Facilities report	182
B2 Immunity from seizure	182
C Possible actions on the European level.....	183
C1 Establishing an indemnity scheme in every European country	183
C2 Recommendations to Member States	184
C3 European indemnity.....	185
C4 Community budget support for the organisation of European exhibitions	186

Annexes

Annex I – State indemnity map

Annex II – Methodology

Annex III - Glossary

Annex IV – Comparative analysis and reports on the German *Bundesländer*

Annex V – List of interviewees

Annex VI – Example of Facilities Report

Annex VII – Summary report of the committee of experts

Annex VIII – List of authors

Regulations on state indemnity schemes

Prologue

This document is the outcome of the invitation to tender issued by the Directorate-General for Education and Culture of the European Commission for a study to inventory national systems of public guarantees relating to exhibitions held in Europe.

The Commission's attention was drawn to the fact that insurance costs for organising exhibitions that bring together works of art from different European museums are becoming more and more prohibitive for organisers.

The absence of national guarantee systems covering this type of cost in certain Member States, or the existence of regimes that differ greatly from one country to another, seems to pose problems for museums willing to lend out their art works to, or borrow art works from, museums situated in other European countries.

Generally speaking, lenders' refusal to accept state indemnity, often owing to a lack of knowledge about the conditions involved, is likely to hamper the full realisation of Article 151 of the Treaty on European Union because it creates obstacles to the circulation of art works, to citizens' knowledge of the cultural diversity existent within the Union and to the representation of the European cultural dimension.

As stated in the Resolution of the European Parliament of 5 September 1981 on cultural cooperation in the European Union (2000/2323 (INI)), cultural exchange and cooperation are a vital contribution to Europe's capacity for integration and cohesion. In October 2003, during Italy's presidency of the European Union, a seminar was held on the standards and management models of European museums and a resolution was adopted. A working group specifically addressed the topic "Exhibition loans: ethical and financial aspects". Naturally, the matter of insurance was also brought up in this discussion, whether with respect to commercial insurance or state indemnity coverage.

This same topic figures in the work programme prepared by the Netherlands for its presidency (second half of 2004). This report therefore also aims to propose avenues to be explored that will lead to the acceptance of state indemnity schemes in order to further the movement of art works.

Introduction

Europe has a very long history and a very rich culture. It is considered to be the most favoured continent in terms of its number of museums, which form the basis of people's knowledge of art, culture and science. At present Europe has more than 30,000 museums. About 300 of these regularly hold important temporary exhibitions.

Museums, as custodians of humanity's memory, have a dual responsibility: on the one hand to their collections and on the other to the public. In the first instance, they are required to look after and conserve the collections they were entrusted with so that they may also be available to future generations. However, they are also required to allow today's public access to these collections. These two obligations are precisely defined in the internationally recognised Code of Ethics for Museums,¹ which was published by the International Council of Museums (ICOM).

The museum is defined as follows: "A museum is a non-profit making, permanent institution in the service of society and of its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment."

If it was merely a matter of conserving museum collections for future generations in the interests of mankind, then art works could simply be deposited in storerooms or high-security buildings specially equipped for conservation, where they would be protected from natural damages caused by light, air, humidity or other such damages and from those caused by vandalism or theft. However, this would not fulfil the other purpose of museums, which is to communicate the collections to the public today, at this moment in time, to make them available for research, exhibit them and make them accessible to a wide audience.

There has been an extraordinary growth in the life of museums worldwide since the late 60s, due to the creation of new museums, the renovation of existing museums and growing public demand for more knowledge.

Despite the importance of their permanent collections, museums are also expected to organise temporary exhibitions, an indispensable complement if museums are to continue to exist and if knowledge of art is to be acquired.

These exhibitions make it possible for a wide audience to see works of art that are usually scattered all over the world, both in museums and private collections. The duty to educate is thus upheld as these exhibitions enable the entire work of an artist, movement or period to be shown.

Organising such temporary exhibitions requires major funding. Lenders have to be convinced to part with their works for a certain period of time (at least 4 months) and, if the exhibition is travelling, up to a year. The works have to be transported by specialised carriers, insured by commercial insurance companies specialised in art works, installed by

¹ International Council of Museums: Code of Ethics for Museums. The ICOM Code was adopted unanimously by the 15th General Assembly of ICOM meeting in Argentina in 1986 and amended by the 20th General Assembly of ICOM meeting Spain in 2001.

architects or scenographers and guarded by qualified security personnel in order to protect them from the increased risks they are subject to. Advertising, the publication of a catalogue, and the production of posters and commercial products must also be taken care of. For example, an exhibition organised today by the Réunion des Musées Nationaux at the Galeries Nationales du Grand Palais may require a budget of 2 to 3 million euro, without taking into account the cost of publishing a catalogue.

The obligation to keep the collections as intact and complete as possible and at the same time to make the works accessible to the public leads to conflict². The larger the public the greater the exposure of museum collections to risk, a risk which is accentuated when the works are temporarily loaned to other museums or galleries. Since the mid 20th century, temporary exhibitions have grown in number in Western industrial countries, with the intention, among others, to democratise culture. One such example is the success of the blockbuster exhibitions,³ which have been very popular since the mid 60s. The public now expects famous museums to hold such unique, major exhibitions quite regularly, an expectation that the museums ought to meet if they are to continue to attract public interest. This migration of exhibits all over the globe, brought about by public demand and cultural policy, is met with scepticism by concerned individuals who express certain reservations about the matter of conservation. According to them, that which has been conserved and guarded for what sometimes amounts to centuries, should not be deliberately endangered in the course of a few decades of exhibitions.

The Institute of Museology in Berlin has conducted a general survey on German museums every year since 1981. A major part of this survey deals with the temporary exhibitions held. The comparisons made in the studies indicate to what extent the number of museum visitors, as a barometer of public interest, depends on the offer of exhibitions. A rise or drop in major exhibitions is the most common reason given to explain the increase or reduction in the number of visitors to certain museums in comparison with previous years.⁴

Given the burden that insurance costs exert on exhibition budgets, insuring art works that are moved and exhibited elsewhere has become a matter of vital importance. The

² See the Code of Ethics: "2.9 Displays, Exhibitions and Special Activities. The primary duty of the museum is to preserve its collections for the future and use them for the development and dissemination of knowledge, through research, educational work, permanent displays, temporary exhibitions and other special activities. These should be in accordance with the stated policy and educational purpose of the museum, and should not compromise either the quality or the proper care of the collections."

³ Some of the blockbuster exhibitions held at present with exhibits from all over the world are: *Das MoMa in Berlin*, Neue Nationalgalerie (Berlin); *Titian*, National Gallery (London) and Prado (Madrid); *Rembrandt*, Albertina (Vienna).

⁴ See for example Statistische Gesamterhebung an den Museen der Bundesrepublik Deutschland für das Jahr 2002, Materialien aus dem Institut für Museumskunde, Heft 57, Berlin 2003, pp. 11 et seq.

principles underlying liability and determining how current risks are assessed will be dealt with in the pages that follow.

This is followed by a study on the EU Member States, including the 12 new members and signatories to the EEA Agreement. A comparative analysis of state indemnity systems or their absence is also included, together with a detailed description of each national system.

Art insurance

The conservation and restoration of art works as well as security standards are just some of the aspects that need attention and just one of the criteria to be considered with regard to permanent or temporary exhibitions or when works are loaned by one museum to another. The matter of moral responsibility also arises. If museums are places where objects belonging to one and all and most often acquired through public funds are entrusted, then they should at least guard against damage. This problem gains in severity when the objects in question are loans and results in the obligation to pay damages if need be.

Some insurance terms need to be defined.

A Liability

The joint liability incurred by two museums on signing the loan agreement forms the basis of all damages paid. The extent of cover is dictated by the national legislation in force, and also by the instructions provided by the lender in the loan agreement.

B Determining the value of a museum exhibit

As mentioned above, objects of great value "travel" in order to be shown in planned exhibitions. Yet, what does the term "value" signify in this context? The concept of "value" when referring to works of art and exhibits has many dimensions. Monetary value has many aspects,⁵ provided in detail below, all of which serve as criteria.

B 1 Cultural or artistic value

Cultural or artistic value⁶ is, generally speaking, the decisive reason for making a work of art an exhibit. It is of primary importance to museums and for exhibitions, but it cannot be taken into consideration for the payment of damages because it cannot be expressed in monetary terms. This is where compensation limits come into play. The uniqueness reflected in this concept of value is nevertheless an aspect that influences the prices of art works.

⁵ We will not concern ourselves with the matter of "present value", which is particularly important in insurance contracts for permanent exhibitions and is based on regular updates of an exhibit's market value so that the premium can be calculated.

⁶ This is not the same thing as sentimental value, which is sometimes confused with cultural or artistic value by private persons, for example in cases where paintings have been inherited from parents; this value is explicitly excluded from German insurance contracts as fictitious.

B 2 Commercial or market value

For many institutions or private persons, the possession or acquisition of a work of art is associated with economic interests. Auctioneers, gallery owners and private persons are included in this category, since for them a work of art is an investment. In their case, the value of a piece of art is determined by market criteria. Such art acquires a certain monetary value which is expressed in terms of the purchase price, sale price or auction price. This value, expressed in monetary terms, is the result of extremely diverse conditions. Public taste, certain trends, the supply of some art works on the market (free competition) as well as national and international interests all play a role in determining it. Auction catalogues provide an indicative value of the average market price. Since the market price is a value expressed in monetary terms, it is used as a basis for determining the amount of compensation.⁷ It is precisely these developments in the art market that determine what sums the museums will have to deal with in part. For example, in early May 2004 Picasso's *Boy with a pipe*, one of his Rose Period paintings, was bought at an auction for over 104 million dollars by an anonymous collector, thereby setting a new world record. With sums of this magnitude on the market, the estimated prices of Picasso works belonging to museums go up as well, which at the end of the day has repercussions on the declared value influencing the compensation in a loan agreement.

B 3 Comparative value

Because of the unique nature of works of art, their market value cannot but be seen as a comparative value. Seeing that pieces from museum collections are rarely found on the art market, their market value can only be estimated by comparing them with art works of equal importance. For those works of art which cannot be compared with anything else, there arises not only the problem of estimating their value but also of their replacement should it be required.

B 4 Replacement value

The market value is not only an indication of the price at which a work of art could be sold for on the market; it also determines the sum that would be required to compensate for a loss. The declared value of a work of art is therefore also its replacement value. The compensation should provide the museum or lender with the means required for a replacement equivalent to the loss suffered.

It is incumbent on the museum lending the work of art or owner of the work of art to specify its exact value. An inexact declaration of value can, when a claim is made, lead to legal disputes and conflict.

⁷ This serves, at least in the case of Germany, to fix the value in insurance contracts. The general conditions adopted in 1988 for insuring exhibitions in Germany clearly express this value as the indemnity amount to be declared.

C Depreciation

The exchanging or loaning of museum pieces does not only require proper knowledge of the potential financial value of a work of art but also an accurate assessment of the extent of the damage and the resulting decline in value.

There are opposing views on the eventual loss in value following damage. Some museum specialists, not many in number, are of the opinion that there cannot be depreciation as long as the piece can be restored to its initial state in one way or another, unless it has been destroyed.⁸ It is admittedly the museum's duty to preserve the exhibits in the condition in which they were entrusted to it, however in many cases, after the exhibits have been restored, only experts can assess the alteration resulting from the damage. The restored art works can therefore be exhibited as they are.

Nevertheless, the rule⁹ when loaning exhibits is that in the event of damage, financial compensation is provided when there is depreciation. This compensation, together with the restoration costs, forms part of the damages paid. Compensation for depreciation constitutes a large part of the total compensation paid by companies insuring art works¹⁰.

D Risks to which museum pieces are exposed

A work of art is exposed to risk at all times. Factors such as age, texture and surrounding environmental conditions all play a certain role. The risk of damage occurring is also dependent on the exhibit's internal deterioration. This not only threatens art works of some age but also the works of modern-day artists. The use of perishable materials, such as foodstuffs, is a big problem for museums and restorers.

A work of art is threatened by, among others, light, humidity and variations in temperature. This is not merely a long-term risk; during transportation, particularly by air, and in the course of other displacements, it is vital that the required hygrometric and thermal conditions are respected.

Many materials, such as wood or canvas, are susceptible to attacks by parasitic plants and animals. Certain exhibition areas increase this risk, for example if a wooden sculpture is installed outdoors.

Despite their good intentions, cleaning and restoration also harbour certain risks. The often cited example of the Beuys bathtub that was cleaned is one of the few funny occurrences; more frequent are the deteriorations caused by inappropriate restoration methods, in some cases even involving experimentation by the restorers themselves, and imprudent and inconsiderate cleaning methods.

The transportation of works of art entails a particular risk. Despite all the precautions taken, damage is most frequently caused during loading and unloading, and also during packing.

⁸ In their opinion, it makes no difference if an earthenware dish was broken and glued back together in the 19th century or if it was restored in the 20th century.

⁹ See Armbrüster, Christian: *Privatversicherungsrecht. Handbuch des Museumsrechts 2. Berliner Schriften zur Museumskunde*, 1992, pp. 77 et seq.

¹⁰ According to insurance companies, it makes up 80% of the total compensation paid each year. According to Prehn, Andrea: *Versicherungen in Museen und Ausstellungen. Matelalien aus dem Institut für Museumskunde*, heft 26, Berlin 1989, p. 29.

Natural phenomena such as fire, floods, earthquakes or storms are the source of many cases of serious damage. For example, the fire at Trausnitz Castle (1961) and the flooding caused by the Arno in Florence (1966) resulted in significant losses. Similarly, the Elbe River flood in 2002 had an impact on museums such as the Staatliche Kunstsammlungen in Dresden. In 2004, art pieces that were part of the Saatchi collection and works belonging to the Tate Gallery were destroyed in a fire at an art storage warehouse in London.

Lastly, an exhibition's visitors can in certain rare cases endanger a work of art. Save for those well-known cases where exhibits were destroyed by unbalanced individuals, museums regularly suffer minor damage from vandalism or carelessness on the part of visitors.

E Significance of the concept of damage

Based on the known causes of damage, measures can be employed to reduce the risk and prevent such damage from occurring. However, no precautionary measure and no security system is good enough to rule out damage completely. Research on damage, with the aim of alleviating it and preventing its occurrence, as well as surveys on preventative measures are particularly important when dealing with works of art. The unique nature of art works and their cultural value, which has already been discussed, make damage prevention a significant duty for museums as well as other cultural institutions.

Damage can be divided into damage by loss, substantial damage and total damage.

Damage by loss is the temporary or permanent loss¹¹ of a museum piece. Theft or seizure are considered to be damage by loss.

Substantial damage refers to the deterioration of a museum piece. Generally speaking, if a piece is part of the museum's own collection, then it is restored. However, if it is on loan then additional expenses have to be taken into account, such as the fees paid to experts or compensation for the depreciation of the exhibit.

It is not always possible to tell the precise difference between such a case and that of **total damage**. The concept of "genre" is used to distinguish between the two. If the museum piece and what remains of it after the damage has occurred can still be considered as belonging to the same "genre" (for example painting, sculpture, etc.), then it is a matter of substantial damage. If this is no longer the case (for example if ashes are the only thing remaining of the painting) then it is a matter of total damage.

F Measures for the prevention of financial loss

At the end of the day all damage inflicted on a work of art has a financial impact. This is why the methods employed by museums for the settlement of damages can qualify as "indirect security measures". The forms actually employed are the insuring of museum collections and public cover or state indemnity.

¹¹ In 1994, Gaspard David Friedrich's painting *Nebelschwaden* was stolen during an exhibition in Frankfurt. As the owner of the painting, the Hamburger Kunsthalle received 3.7 million marks as compensation from the insurance company. In August 2003 the painting was returned intact to the Hamburger Kunsthalle, which now has to refund the insurance company.

G Commercial insurance

Art and exhibition insurance is, in its present form and specialisation, a relatively recent service when compared with other branches in the insurance sector. Rudolf Gärtner¹² describes the emergence of this sector as a consequence of post-war developments. In the late 60s (and even before), the standard of living in Western industrial countries rose to such a level that it was able to sustain a renewed interest in culture, and particularly in art, across many levels of society. One of the consequences of this development was the "discovery" of art as a financial investment both in the private sphere and in private business. The 80s saw a veritable explosion in this market and the works belonging to certain artists or art trends, for example the modern art classics, were sold for such high prices that the work, artist, auction house and purchaser, when his name was known, made the front page of newspapers. At the same time public services in industrial countries spent much larger sums on art and culture, evidence of which is provided by the many new museums constructed and the large international exhibitions held. The concern over security, which was not only felt by investors who had turned to art, led the insurance sector to discover this new market.¹³ It is certainly a very specialised market and not all companies provide art or exhibition insurance. Nevertheless, following the rise in prices on the art market, first the premiums and then, as a consequence, the amount set aside for insurance in exhibition budgets increased. A Matisse exhibition held in 1970 at the Grand Palais in Paris was insured for 300 million francs while the same exhibition held in 1993 at the Centre Pompidou in Paris was insured for 6 billion francs (45 million and 915 million euro respectively); in 20 years the amount increased 3.7 times at constant prices.

Even though, due to the rising number of exhibitions, companies have agreed to reduce their rates, insurance costs still threaten to suppress exhibition plans. What is more, with the State cutting back on subsidies for culture, there is a need for other solutions.

In general, in order to hold an exhibition, insurance must be taken out with a commercial insurance company specialised in art works. Certain mandatory clauses are foreseen:

- comprehensive all-risks coverage from nail to nail
- agreed value
- a waiver of subrogation against the organisers, carriers and packers
- depreciation of value in case of damage is included in the guarantee leading to compensation.

Added to these clauses practically all over the world nowadays is the cover against the risk of terrorism during transportation and while the works remain with the borrower. In France, museums are required by law to insure themselves against this risk when borrowing works; for this reason French museums feel that they are entitled to demand the same cover when they are the lenders.

Risks not included in a standard insurance policy can also be covered, for example the risk of war and, in certain countries, the risk of an earthquake.

¹² A detailed description of this development can be found in the work of Rudolf Gärtner: *Versicherungsfragen im Museumsbereich*. Handbuch des Museumsrechts 10, Opladen 2002, pp. 15 et seq.

¹³ To meet this demand in a professional manner, insurance companies employed art historians as intermediaries between them and collectors, art galleries, museums or exhibitions. And in 1972, at least in Germany, the "general conditions for insuring exhibitions" adopted in 1957 were complemented by the "specific conditions for insuring art works". In 1988 the general conditions were updated and adapted to the new situation.

Museums often question the merits of taking out insurance, because damages occur so rarely that the total premiums are generally disproportionate to the total compensation paid. This situation does however have its advantages: the scarcity of damages is a sign that the collections are treated with care and are a point in favour of the museums to which they were entrusted.

Rudolf Gärtner cites a publication listing exhibitions whose insurance costs constitute approximately 40% of their total expenses, but adds that for the five major exhibitions whose files he was able to consult, insurance costs took up between 3% and 24% of the budgets. In France, insurance costs represent 20% of exhibition budgets.

H Non-insurance

We know that in many European countries, works in the collections owned by major museums are not insured because the State is its own insurer. However, such non-insurance is in fact seldom accepted for temporary exhibitions, because there is no coverage in the event of damage or loss.

Only some exceptions are known. For example, works loaned by the national museums in Paris to museums belonging to the City of Paris or the Institute of France are not insured if the exhibition is held in Paris. In the Netherlands, the government and four municipalities have established a system whereby works exchanged between them are not insured; this enables them to organise more temporary exhibitions and encourage the movement of works within the country.

In Germany, the works which the Stiftung Preussischer Kulturbesitz loans to certain museums in the different *Bundesländer* are not insured.

Such mutual non-insurance systems are not possible unless the museums concerned are certain that the security system their partners employ to protect their works of art is of the same standard as theirs.

I State indemnity

State indemnity is the most significant way of economising on insurance costs. The State undertakes to provide compensation for damages directly, without any insurance company acting as an intermediary. When a temporary exhibition is held, by using state indemnity the borrower assures the owner of the work of art that, in case of damage or loss of the piece borrowed, the State will provide financial compensation. The different views on state indemnity make it possible to assess the importance that each country attributes to culture and its funding: the objective is not only to aid museums financially, but also to promote cultural exchanges and sometimes cultural representation at the regional and national level.

Sweden (1974) and the United States (1975) were the first to adopt state indemnity schemes. In the United States, 746 exhibitions have benefited from this type of scheme since its inception; so far, it has cost the American federal government \$105,000 (administrative costs and two cases of minor damage). Great Britain created an indemnity scheme in 1980, Germany in 1992 and France has had such a system since 1993. The indemnity schemes of Great Britain and France do not permit works belonging to their national collections to be insured, but do not differentiate at all between works belonging

to private lenders in their respective countries and works belonging to collections in Europe or even non-European countries, no matter if these institutions are public, private or have a different status. This is discussed in the reports drawn up on each country.

In order for a state indemnity system to be applied, the countries adopting it must have a particular legislative and statutory framework. The body administering this indemnity should be able to bind the State without discussion or prior notification, which requires that the indemnity be automatically included in the state budget.

The existent state indemnity schemes are economical alternatives that should provide the same coverage as commercial insurance companies if they are to be accepted by lenders. On the other hand, in order for such a scheme to provide significant economies, the exhibition organiser will have to convince all the lenders to accept it.

The systems vary greatly from one country to another and are not very well known, which may lead lenders to reject state indemnity schemes and consequently refuse to loan their works to temporary exhibitions or to demand that the borrowers resort to commercial insurance. The latter are often too expensive for the borrowers and result in them not including one or other work in their exhibitions or, worse, in them refusing to organise them owing to the exorbitant costs.

Before deciding whether to accept state indemnity or not, lenders may be driven to ask themselves the following questions:

- In what sphere has state indemnity already been legally applied and what are the experiences in this sphere?
- In the case of damage, what were the experiences of the party suffering the damage?
- Is the party responsible for the state indemnity, provided its budgetary situation permits it, in a position to provide compensation?
- What arrangements does this party make in order to ensure eventual compensation without any hitches?
- Does the state indemnity scheme in question comply with all the usual liability conditions and does it cover all that a private insurance policy does?

J Advantages and drawbacks of non-insurance, commercial insurance and state indemnity

The observations made with respect to maintaining an insurance system or replacing it with a state indemnity scheme, or perhaps even acknowledging the state indemnity used by partner museums, have given rise to many arguments that need to be considered, arguments that have always come up when dealing with this issue. These arguments are provided below without any value judgement or discussion.

J 1 Advantages and drawbacks of non-insurance

- No money is spent on insurance, so the money saved can be used for other aspects of the exhibition.

- In the event of damage, lenders cannot depend on any financial compensation, which could have been used to restore the work of art or could serve as compensation for the damage suffered.

J 2 Advantages and drawbacks of commercial insurance

- Insurance costs put a tremendous strain on museum budgets, because the expenditure represented by the premium payments is disproportionately high when compared with the compensation *ultimately* paid.
- Insurance costs impose limits on exhibition projects and restrict the mobility of museum loans.
- Insurance costs serve as obstacles for projects that are doubtful in terms of conservation, for the reason that insurers are not willing to cover particularly high risks. From this point of view, insurance costs are a guarantee against ill-considered exhibition projects.
- Due to the fact that insurance companies set limits to the risks they are willing to cover, the insured party is always subject to a certain risk; museums are thus always inadequately covered despite the premiums paid and are likely to be faced with significant losses.
- It is easier for a museum, when damage becomes the subject of litigation, to sue a commercial insurance company than to institute proceedings against a sister institution.
- Long-term collaboration with the same insurance company can facilitate compensation procedures; the company can even be conciliatory at times.
- Insurance companies have an influence on security measures taken in museums, thus helping prevent damage.
- When relying on the guarantee provided by the insurance company, museum neglect to enforce preventive security measures.
- Insurance companies sometimes hinder the work in museums with intolerable security instructions.

J 3 Advantages and drawbacks of state indemnity

- State indemnity enables museums to economise on insurance premiums. Ideally, the museums take advantage of these savings, which has a positive impact on the price of the admission ticket¹⁴.
- The question arises whether, for large claims, the party legally responsible is in a position to easily compensate the third party for its destroyed property and, moreover, whether it will be able to collect the funds required to rebuild its own collection.
- State indemnity does not imply additional administrative formalities, except when large claims are made.

¹⁴ On 19-02-2004 the *Die Welt* newspaper commented on the state indemnity undertaken by the federal government for the *Das MOMA in Berlin* exhibition and pointed out that insurance costs would have been at least 1.8 million euro if state indemnity had not been provided. This would have led to a €3 increase in the admission price, from €12 to €15.

- In cases giving rise to dispute, what will the consequences be for the lender, particularly if the lender is a private person? Will the State be as accommodating with regard to compensation as a private insurance company that risks losing a client would be? In the event of a lawsuit, will the lender have the means to stand up to the State?
- Does state indemnity imply a loss of supremacy for museums? To what extent would the State allow itself a certain influence over the exhibition project, if for example in its opinion the value of a loan was much too high for it to take on that risk?
- Adopting a state indemnity scheme could lead to an additional rise in premiums because of the significantly reduced market share of private insurance companies. These companies would then no longer have the capital reserves for large claims and would have to raise their premiums in order to remain profitable.
- State indemnity schemes are seen in a very favourable light by museums due to the significant savings they represent.

Analysis of the situation in Europe

A General

Of the 31 countries studied, 17 have state indemnity schemes and 14 do not.

Countries with state indemnity:

Austria, Bulgaria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Ireland, Lithuania, the Netherlands, Norway, Poland, Spain, Sweden and the United Kingdom.

In Norway there are two state indemnity schemes: one is for incoming loans and is run by the Ministry of Culture and Church Affairs; the other is for outgoing loans and comes under the Ministry of Foreign Affairs.

Countries without state indemnity:

Belgium, Cyprus, Estonia, Greece, Iceland, Latvia, Liechtenstein, Luxembourg, Malta, Portugal, Romania, the Slovak Republic, Slovenia and Switzerland.

- Luxembourg does not have an official state indemnity system. Nevertheless, when major exhibitions are held, the possible risks are covered by the State.
- With regard to Malta, there is no document stating the methods and procedures governing the country's state indemnity scheme, and the system has never been put into use. This is why it was decided to include Malta in the list of countries without state indemnity. For more information on the situation in Malta, readers should refer to the specific country report.
- In Romania, one such act was adopted before the 1989 revolution but has never been applied because the implementing decree is still being prepared.

B Comparative analysis of state indemnity schemes

This section deals with 17 countries studied that have indemnity schemes.

B1 Scheme introduction dates and legal instruments

I Dates introduced

SE	UK	DK	NO	FI	ES	NL	DE	FR	HU	IE	IT	BG	CZ	PL	LT	AT
74	80	84	85	86	88	89	92	93	96	97	97	99	00	03	03	04

(Austria AT, Bulgaria BG, Czech Republic CZ, Denmark DK, Finland FI, France FR, Germany DE, United Kingdom UK, Hungary HU, Ireland IE, Italy IT, Lithuania LT, Netherlands NL, Norway NO, Poland PL, Spain ES and Sweden SE.)

Sweden was the first country to set up an indemnity scheme for exhibitions in 1974. Other countries followed in the 80s and 90s. This expansion shows that there is a rising need for such a system.

- In Italy, a state indemnity scheme was first set up between 1997 and 1999. It will soon be replaced by a new system whose implementing decree is currently being prepared.
- In Austria, a new scheme was instituted in 2004 following the amendment of the regulations on the status of museums.
- The Netherlands is at present considering updating its indemnity scheme.

II Legal instruments and evaluation

Many different legal instruments are used to regulate state indemnity schemes; it therefore seems useful to tabulate them.

	Circulars	Act (without an implementing decree)	Act with an implementing decree	Act plus a contract between beneficiary and State	Decree enacted per project	English version
DE				×		×
AT				×		
BG		×				
DK	×	×				×
ES			×			×
FI			×			×
FR			×			×
HU					×	
IE				×		×
IT			×			
LT			×			×
NO MFA	×					×
NO MC	×					×
NL	×					
PL			×			
CZ					×	
UK		×				×
SE		×				×

(Norway: Ministry of Culture indemnity – NOMC; Ministry of Foreign Affairs indemnity – NOMFA)

- In Norway (MC and MFA) and the Netherlands, the system is solely based on the relevant ministerial circulars.
- Bulgaria, the United Kingdom and Sweden have such an act but no implementing decree; the granting of indemnity is therefore directly dependent on the specific act.
- Denmark's system is based on an act without a decree but including circulars.
- In Spain, Finland, France, Lithuania, Poland and the indemnity system that is to be set up in Italy, the acts are complemented by a decree specifying the conditions and methods according to which the system will be applied.
- In Germany, Austria and Ireland, the acts are implemented by a contract between the State and the party benefiting from the indemnity.

- In Hungary and the Czech Republic, a decree is enacted for each project. For example, in 2004 a decree was enacted in Hungary specifically for the *Claude Monet and Friends* exhibition. It should be noted that an act should be replacing this system in Hungary in the near future. State indemnity has not as yet been applied in the Czech Republic.

The wide variety of legal instruments employed in each country has resulted in:

Circulars having no legal force in Roman law countries;

decrees not defining the applicable legal framework;

acts without an implementing decree not being specific enough with respect to the relevant implementing methods.

An act accompanied by an implementing decree and a document specifically addressed to lenders thus seems to be the most suitable legal instrument since it provides both a fixed legal framework and the applicable conditions for implementing it. In fact, one of the reasons that lenders refuse foreign state indemnities is that the legal texts are often not clear enough, especially about the extent and scope of cover and the procedures to be followed in the event of damage. Moreover, an official English translation of all relevant documents would certainly facilitate lenders' acceptance of foreign state indemnities.

B2 Selection of certain parameters

I General comparison

In order to make a comparative analysis, we have used the most significant parameters pertaining to the various state indemnity schemes to study their essential similarities and differences.

Readers should refer to the specific country's report for details.

Certain parameters are dealt with in greater detail later on.

1 State indemnity coverage

Works covered

The main criteria determining if works can be covered by a state indemnity scheme are: incoming loans, outgoing loans, works from national collections and deposits. Deposits are long-term-loans from one museum to another, where the borrower makes use of its indemnity to cover the work of art. Other criteria such as the nature, fragility, size or origin of the work may eventually also be taken into consideration.

Scope

Coverage of works is the same as that provided by insurance companies, namely nail to nail. Nevertheless, in certain indemnity schemes the right is reserved to exclude certain intervals.

Risks excluded

As is customary, the risks not covered are listed rather than those included in the indemnity. Particular attention has been paid to risks related to terrorism or acts of war.

2 Eligibility criteria

Beneficiaries

The potential beneficiaries vary from one state indemnity scheme to another: in some cases only national museums or museums financed with public funds are covered, in other cases the system also applies to private museums.

Minimum and maximum limits

The existence of minimum and/or maximum limits that set the lowest and highest overall insurance values for each project results in the de facto exclusion of some exhibitions.

3 The way the system works

Deductible

Some state indemnity schemes offer 100% coverage, while in others the liability is shared by the State and the museum. In the latter case, the museum must cover the first losses either by paying an insurance premium or by bearing the cost of damage using their own funds. The different methods of calculating the deductible are analysed elsewhere.

Maximum amount

The existence or absence of a maximum value that can be insured by state indemnity will be the subject of another analysis.

Cost

A determining factor in the organiser's decision to apply or not for state indemnity is whether the State provides it at a cost or free of charge. These costs are discussed in another analysis.

Waiver of subrogation

Some state indemnity schemes include a waiver of subrogation clause and others do not, according to the situation. A waiver of subrogation clause states that in the event of damage, if compensation is provided by the State, the latter cannot then take action against the organisers or any other person involved in the exhibition (such as carriers or packers), save in the event of malice, fraud or gross misconduct.

		DE	AT	BG	D K	ES	FI	FR	H U	IE	IT	LT	N O M C	N O M F A	NL	PL	CZ	G B	SE	
COVERAGE																				
Works covered	Incoming loans	X	X	O	X	X	X	X	X	X	X	X	X	O	X	X	X	X	X	X
	Outgoing loans	O	O	X	O	O	X	O	O	O	X	O	O	X	O	O	O	O	O	X
	Incoming and Outgoing loans	O	O	O	O	O	X	O	O	O	X	O	O	O	O	O	O	O	O	X
	Deposits	X	O	O	O	X	O	O	O	O	O	O	O	O	O	O	O	O	X	X
	National collections excluded	O	O	O	O	X	X	X	X	X	O	X	O	O	X	X	X	X	X	X
Scope	Nail to nail	X	X	X	X	X	X	X	X	X	X	O	O	X	X	Y	Y	X	X	
	Certain intervals excluded	O	O	O	O	O	X	O	O	O	X	O	X	O	O	Y	Y	O	X	
Risks excluded	No risks excluded	X	O	X	O	O	X	O	O	O	X	X	O	O	O	Y	Y	O	O	
	In situ terrorism	O	X	O	O	O	O	O	O	O	O	O	O	O	O	Y	Y	O	O	
	Terrorism en route	O	X	O	O	O	O	O	O	O	O	O	O	O	O	Y	Y	O	O	
	Acts of war and nuclear threats	O	X	O	X	X	O	X	X	O	O	O	X	X	X	Y	Y	X	X	
ELIGIBILITY CRITERIA																				
Beneficiaries	All national museums	O	X	X	X	X	X	O	X	O	X	X	X	X	X	X	O	X	X	
	Selected national museums	X	O	O	O	O	O	X	O	X	O	O	O	O	O	O	O	O	O	
	Other museums financed with public funds	X	O	O	X	X	X	O	O	X	X	X	X	X	X	X	X	X	X	
	Private museums	O	O	O	X	O	O	O	X	O	X	O	X	X	O	O	O	X	X	
Minimum/maximum limit per project <i>Cf.</i> relevant analysis	Minimum limit	O	O	O	X	O	X	X	O	X	O	X	X	X	O	X	O	O	X	
	Maximum limit	O	X	O	X	X	X	O	O	O	O	X	X	O	X	O	O	O	X	
	Minimum and maximum limits	O	O	O	X	O	X	O	O	O	O	X	X	O	O	O	O	O	X	
THE WAY THE SYSTEM WORKS																				
Self risk/Deductible	<i>Cf.</i> relevant analysis	O	O	O	X	X	X	X	O	O	O	X	X	X	X	O	Y	X	X	
Maximum amount	<i>Cf.</i> relevant analysis	X	X	X	X	X	X	O	O	X	X	X	X	X	X	O	O	X	O	
Cost of indemnity	<i>Cf.</i> relevant analysis	O	O	O	O	O	X	X	O	O	O	O	O	O	O	O	O	O	X	
Waiver of subrogation		O	O	O	Y	X	O	X	Y	Y	O	Y	O	O	O	Y	Y	O	O	

(X indicates a positive response, O a negative response and Y a lack of relevant regulations)

This section only deals with those parameters that are not the subject of another analysis.

Works covered

Generally speaking, state indemnity schemes only cover works on loan from abroad.

- Up until 2001, Denmark's indemnity scheme only covered works borrowed from other countries. Works from Danish collections are now also included.

Some schemes (Sweden, Finland) also cover loans from national collections when they are exhibited abroad.

- In 2002, the Swedish indemnity scheme covered the works for the *Utopia and Reality* exhibition organised by and held at the Bard Graduate Center for Studies in the Decorative Arts, Design and Culture in New York.
- In 2003 and 2004, the Finnish scheme covered the works on show at *The Art of Finland: Land of Nature and Living Myth* exhibition organized by Kiasma Art Museum and exhibited at three different venues in Japan: Yamaguchi Prefectural Museum of Art, Gunma Museum of Art and Sendai Mediatheque.

Bulgarian state indemnity and that of the Norwegian Ministry of Foreign Affairs are exclusively applicable to outgoing loans of national works exhibited abroad at exhibitions that are organised by their national institutions with the aim of promoting their national culture. The institutions that host these exhibitions thus save on the cost of insuring the particular works.

- The following three exhibitions benefited from the state indemnity provided by the Norwegian Ministry of Foreign Affairs:

In 2002, Tunes in Landscape at the Museum of Fine Arts in Budapest.

In 2003, *Edvard Munch's Drawings* at the Ixelles Museum in Brussels and *Edvard Munch: Theme and Variation* at the Albertina Museum in Vienna.

- In 2003, eight exhibitions benefited from the Bulgarian state indemnity scheme: four held during the *Europalia* festival in Brussels and four that were part of the Days of Bulgarian Culture held in Moscow.

While state indemnities are principally used to cover works loaned and/or – more rarely – borrowed for temporary exhibitions, it should be noted that Spain, Norway (MFA), the United Kingdom and Sweden can also cover deposits. This option is frequently used by the British.

In most of the countries studied, by virtue of the fact that the State is, according to standard practice, its own insurer, works belonging to national collections are not insured and are thus not covered by indemnity schemes.

The Irish and Polish indemnities exclude works belonging to private collections in the country, which might be an obstacle to the organisation of exhibitions, particularly in Ireland, where most loans come from private collectors.

Scope

Works are generally covered from nail to nail: from the removal of the work from its place to its return to the lender, in other words, during exhibition, storage and transportation. However, some indemnities exclude certain periods of time or are limited to the national territory.

- In the Italian and Swedish indemnity schemes, the State reserves the right to exclude part of or the entire transportation if the risks are considered to be too high.
- In the Finnish state indemnity, part of the exhibition venue may also be excluded.
- The indemnity scheme of the Norwegian Ministry of Culture does not provide nail-to-nail coverage and specifies that the works are covered during exhibition and

storage, while this can be extended to include part of or the entire transportation following application, which is generally the case.

- The Lithuanian and Polish indemnities are limited to their national borders.

Risks excluded

Some state indemnity schemes (Germany, Finland, Ireland and Italy) do not exclude any risks, but this is not always clearly stated in the official texts.

Since the terrorist attacks in the United States on 11 September 2001, exhibition organisers have been increasingly worried about covering the risk of terrorism. The terrorist attacks in Madrid on 11 March 2004 will undoubtedly increase awareness of the threat of terrorism, a threat that is now tangible in Europe.

Given that, according to standard practice, the coverage of risks is the rule and their exclusion the exception, the emergence of new risks may lead to a certain ambiguity and different interpretations.

Such is the case with the risk of terrorism. Users are not always aware that unless it is explicitly excluded it is, in fact, included.

Moreover, the fact that some state indemnities include the risk of terrorism and exclude acts of war may, in the event of damage, lead to confusion (the Danish, Spanish, Dutch, Swedish and two Norwegian schemes).

Beneficiaries

The state indemnity schemes were originally set up for the national museums. However, in recent years, some countries have extended their schemes to cover independent museums that receive public funding and privately-owned museums.

- The Danish, Italian, Norwegian, British and Swedish indemnities are from now on open to private museums.
- In France, it is interesting to note that state indemnity was recently provided for the projects co-organised by the Réunion des Musées Nationaux and municipal museums: the exhibition of the Winthrop Collection at the Musée des Beaux-Arts in Lyons and the Rubens exhibition at the Palais des Beaux-Arts in Lille.

Waiver of subrogation

Only two countries include a waiver of subrogation clause: France and Spain. In the event of damage, ten countries can take action against the organisers or third parties acting on their behalf. In the other countries, no mention is made of this clause whatsoever.

II Specific analysis

I Minimum and maximum limits

	Min. limit	Minimum amount in national currency		Min. amount in euro	Max. limit	Maximum amount in national currency		Max. amount in euro
DE	○				○			
AT	○				×			100,000,000
BG	○				○			
DK	×	DKK	10,000,000	1,343,788	×	DKK	2,000,000,000	268,819,488
ES	○				×			200,000,000
FI	×			500,000	×			125,000,000
FR	×			46,000,000	○			
HU	○							
IE	×			1,270,000	○			
IT	○				○			
LT	×	LTL	1,000,000	289,699	×	LTL	5,000,000	1,448,532
NOMC	×	NOK	5,000,000	610,612	○			
NOMFA	×	NOK	3,000,000	366,367	○			
NL	○				×			227,000,000
PL	×			500,000	○			
CZ	○				○			
UK	○				○			
SE	×	SEK	200,000	21,827	×	SEK	3,000,000	326,847

Some state indemnities use minimum and/or maximum limits as eligibility criteria, which indicate the highest and/or lowest permissible value of the works to be covered.

The part not covered by state indemnity should then be insured by a commercial insurance company or out of the museum's own funds.

- Denmark, Finland, Lithuania, Norway (MC) and Sweden have set both a minimum and maximum limit.
- Germany, Bulgaria, the Czech Republic, Italy and the United Kingdom have set neither a minimum nor a maximum limit.

The other countries have set either one or the other.

In each country, the minimum and maximum values limit the financial risks incurred for which public funds must be drawn upon; for further coverage private insurance companies must be consulted.

Minimum limit

The minimum limit sets the lowest overall insurance value which the works must have in each project in order to benefit from state indemnity.

- Sweden has the lowest minimum limit. This limit is set at approximately €20,000 for touring exhibitions and is even lower for exhibitions held at a single venue (approximately €2,000).
- In Finland, Lithuania, Norway (MC and MFA) and Poland, the minimum limits range between €300,000 and €600,000.
- In Denmark and Ireland, the minimum limit is about 1.3 million euro. In this respect, the National Museum of Dublin does not use state indemnity because its projects fall short of the minimum limit.

- In France, the minimum limit is set at 46 million euro by law. However, in practice, given the fixed fee and deductible which determine the premium rate charged by insurance companies, state indemnity is not a financially viable option unless the total value of the exhibition is 250 million euro or more.

The high minimum limit results in some exhibitions with fewer funds essentially being excluded, particularly contemporary art exhibitions such as those held at the Georges Pompidou National Centre for Art and Culture.

Maximum limit

The maximum limit restricts the highest insurance value of the works that can be covered by state indemnity.

- Sweden and Lithuania have the lowest maximum limits, approximately 326,000 euro and 1.5 million euro respectively.
- In Austria and Finland, the maximum limits reach 100 million and 125 million euro respectively.
- In Denmark, Spain and the Netherlands, these limits range between 200 and 270 million euro.
- In Spain, the guaranteed maximum insured sum per project is 200 million euro and in special cases may reach 2,500 million euro if proposed by the Finance Minister and approved by the Cabinet. An exception is made for the collection belonging to Baroness Carmen Thyssen-Bornemisza, whose guaranteed maximum insurance value is 540 million euro.

When exhibitions requiring large sums are organised, the maximum limit is easily reached. When this happens, some museums then choose to first insure those works with the highest insurance value.

- *In 2003, the Prado Museum was only able to cover 7 of the 41 works on loan for the Vermeer and the Dutch Interior exhibition and only 4 of the 31 works on loan for the Titian exhibition by means of state indemnity. In the Manet at the Prado held in 2004, only 4 of the 111 loans were covered by state indemnity.*

In countries which do not set a maximum limit, the State's liability and the commitment of public funds are considerably higher.

- *In Germany, the value of the exhibition of masterpieces from New York's Museum of Modern Art, held at the Neue Nationalgalerie in Berlin, was insured by the German state indemnity scheme for an amount equal to 2.4 billion euro.*
- *In France, the value of the Matisse Picasso exhibition, held at the Galeries Nationales du Grand Palais, was insured by state indemnity for an amount equal to 1.9 billion euro.*

The existence of a minimum limit and/or deductible and/or maximum limit affects the premium rate charged by commercial insurance companies. When a minimum limit and/or deductible are set, the effective rate is higher than the market rate because the insurance company undertakes to cover the first losses, which are also the most tangible.

On the other hand, when a maximum limit is set, the effective rate is lower than the market rate because the risk of damage is lower.

2 Deductible

DE	AT	BG	DK	ES	FI	FR	HU	IE	IT	LT	NO MFA	NO MC	NL	PL	CZ	UK	SE
○	○	○	×	×	×	×	○	○	○	×	×	×	×	○	○	×	×

Some state indemnity schemes have no deductible and therefore also cover the first losses; others set a deductible which is covered by the museum. However, in some countries, museums cannot take out insurance with commercial companies and must cover the first losses from their own funds: this is referred to as "self risk". Nevertheless, the term "deductible" shall be used for the purposes of this study.

- Germany, Austria, Bulgaria, Hungary, Ireland, Italy, Poland and the Czech Republic provide 100% cover, also including the first losses. The museum is therefore not liable for any losses.
- In Denmark, Spain, Finland, France, Lithuania, Norway, the Netherlands, the United Kingdom and Sweden, one or more deductibles are set which must be covered by the museum.

The concept of a deductible may have different financial implications for the museum; its funds may be committed solely in the event of damage or independently of the fact that damage has occurred. Readers should consult the tables provided in the specific country reports for information on their respective deductibles.

► *Financial involvement of the museum solely in the event of damage*

If the museum has to bear the first losses up to the cost of the deductible out of its own funds, this implies that in the event of damage it will have to pay part of the cost. The methods employed to calculate this cost vary from one scheme to another:

The amount paid by the museum is calculated in relation to the insured value of the works.

- In Denmark and Sweden, the national museums do not have recourse to commercial insurance companies, with the exception of insurance policies taken out by lenders, and consequently bear all losses out of their own funds. In Denmark, three different deductible levels have been set; they range from DKK 100,000 (€13,439) to DKK 300,000 (€40,317). In Sweden there are eleven different deductible levels, ranging from SEK 20,000 (€2,198) to SEK 120,000 (€13,185). Nevertheless, the national museums in this country can, if they wish, take out insurance against certain risks with the Kammarkollegiet (for more information, see the report on Sweden).
- In the United Kingdom, museums can either cover the losses using their own funds or take out insurance with a private insurance company. The deductible is set at £300 (€446) for sums up to £4,000 (€5,949) and rises to £300 plus 1% of the value of the works for amounts exceeding £4,000.

The amount paid by the museum is a percentage of the cost of the damage.

- In Lithuania, the museum covers 1% of the cost of the damage.

The amount paid by the museum is a fixed sum regardless of the value of the works.

- In Norway (MC), museums have to budget for the cost of the damage, whose upper limit is specified each year in the state budget. In the last three years, this amount was set at NOK 200,000 (€24,238).

The compensation granted by the state in the event of damage is a percentage of the insured value of the works, the balance being paid by the museum.

- In the Netherlands, the system is run according to the following three criteria:
The museums have to use their own funds to cover the first losses up to a limit of €45,000 per exhibition.
Before being entitled to state indemnity, the museums have to spend as much on the cost of damage as was gained in profit from the exhibition.
In the event of damage, the compensation paid by the State is calculated at 1 to 5 % of the insured value of the works.

The liability for the deductible is shared by the lender and the borrower in the "loan" indemnity provided by the Norwegian Ministry of Foreign Affairs.

The lender covers the risks associated with transportation and storage, while the borrower covers those relating to the exhibition at an amount corresponding to 1% of the value of the works and up to NOK 100,000 (€12,119).

► *The museum pays an insurance premium up to the cost of the deductible.*

The museum must cover the works with a commercial insurance policy up to the cost of the deductible and the State takes over the responsibility for the remaining insurance sum.

- In Spain and Finland, the deductible levels are set according to the insured value of the works for which compensation may be required. The scheme in Spain provides for four levels, ranging from €12,020 to €60,101, while in Finland there are three levels, beginning at €18,000 and reaching €54,000.
- In France, the deductible is set for each exhibition and varies depending on the value of the exhibition and the insurance value of the most expensive work of art on show in the exhibition, the minimum currently being set at 46 million euro.

3 Maximum amount

	Maximum amount for the year	Maximum amount at a given point in time	Amount in national currency		Amount in euro
DE	×	○			Approved every year
AT	×	○			1,000,000,000
BG	×	○			Approved every year
DK	○	×	DKK	4,000,000,000	537,610,432
ES	×	○			1,600,000,000
FI	○	×			550,000,000
FR	○	○			
HU	○	○			
IE	○	×			190,000,000
IT	○	×			300,000,000
LT	×	○	LTL	5,000,000	1,448,409
NOMC	×	○	NOK	750,000,000	91,509,128
NOMFA	×	○			Approved every year
NL	×	○			227,000,000
PL	○	○			
CZ	○	○			
UK	○	×	£	1,205,000,000	1,784,515,200
SE	○	○			

Some countries limit the risks incurred for which public finances may be drawn upon by setting a maximum insurable sum which varies from €1,448,409 (Lithuania) to €1,784,515,200 (United Kingdom) and is defined either as a total for the year, or at a certain point in time.

France, Poland, the Czech Republic and Sweden do not set any maximum limit to the risks covered by the state indemnity.

Germany, Austria, Bulgaria, Spain, Lithuania, Norway (MC and MFA) and the Netherlands do determine a maximum sum per year.

- In Germany, Bulgaria and Norway (MFA), the amount is specified each year in the national budget based on the recommendation made by the beneficiaries. For example, in Norway (MFA) the maximum amount set for 2004 is NOK 4.5 billion (€544,463,872). In Germany and Bulgaria this information is not made public.
- In Spain, there are two amounts determined by law: an annual maximum limit of 1,600 million euro and a maximum limit set per project, which in some cases may reach 2,500 million euro (cf. the report on Spain).

Denmark, Finland, Ireland, Italy and the United Kingdom determine maximum amounts applicable to a particular point in time.

- In Denmark and Finland, the amounts are in the region of 540 million euro.
- In Ireland, the maximum sum insured is 190 million euro and may be increased with the approval of the Minister of Finance.
- In the United Kingdom, the maximum amount for non-national institutions is set at £1,205,000,000 (which is divided between England £1,100,000,000, Scotland £70,000,000 and Wales £35,000,000 according to the number of exhibitions held). No amount is specified for national museums.

The existence of a maximum limit on sums that can be insured by state indemnity creates competition among the projects.

4 Cost of the indemnity

Only three countries charge for the indemnity to be granted: Finland, France and Sweden.

- In Finland, the beneficiary institution is required to pay the Ministry of Education a fixed amount of €185 for each project.
- In France, the organiser benefiting from the state indemnity pays a fixed fee of €30,500 to the Treasury for each project (in addition to the premium paid to the insurance broker).
- In Sweden, the state indemnity granted entails two costs: the first is the fixed amount of SEK 3,000 (€330), while the second is set at 0.05‰ of the overall value of the exhibition, and should be at least SEK 1,000 (€110) and at most SEK 100,000 (€11,000).

B3 Statistics: Financial risks incurred

I Frequency of use

	2001			2002			2003		
	Requests	Applications accepted	Applications rejected	Applications	Applications accepted	Applications rejected	Applications	Applications accepted	Applications rejected
BG	0			1	1	0	1	1	0
DK	5	5	0	6	6	0	5	5	0
ES		9			10			10	
FI	12	12	0	12	12	0	29	29	0
FR	0			2	2	0	5	5	0
HU	0			2	2		2	2	
IE	5	5	0	3	3	0	4	4	0
LT							1	1	0
NOMC	7	6	1	4	3	1	3	3	0
NOMFA	3	3	0	3	3	0	2	2	0
NL	2	2	0	6	6	0	2	2	0
UK	174	127	1	219	157	0	169	120	0
SE	53	48	5	49	39	10	45	39	6

- In Germany, this information is confidential and therefore not available.
- Austria's state indemnity scheme was set up in 2004.
- In Italy, the state indemnity scheme in force between 1997 and 1999 benefited 10 exhibitions. Between 2001 and 2003, there was no state indemnity scheme in the country and there are thus no statistics for those years.
- In Lithuania, an indemnity scheme was only set up in 2003.
- In Poland and the Czech Republic, state indemnities have never been used.

- The statistics available for the United Kingdom only concern non-national museums.

In 9 of the countries dealt with in this study, 1 to 10 projects benefit from state indemnity each year. This figure is considerably higher in Finland, Sweden and the United Kingdom.

- In 2003, 29 and 39 projects benefited from state indemnity in Finland and Sweden respectively.
- In the United Kingdom, 120 exhibitions held at non-national museums were granted state indemnity in 2003, which is due to several factors: all British museums are eligible, there is no minimum limit, the deductible is very low and the indemnity is free and easy to use.

II Sums insured

The three tables below make it possible to assess the risks incurred by the countries providing state indemnity.

In order for readers to be able to appreciate the extent to which these amounts differ from country to country, the amounts are given in the respective country's currency and in euro.

The first table shows the lowest sum insured for an exhibition in the last three years in each country.

MINIMUM SUM INSURED FOR AN EXHIBITION									
Country	2001			2002			2003		
		Amount in national currency	Amount in euro		Amount in national currency	Amount in euro		Amount in national currency	Amount in euro
DK	DKK	11,000,000	1,478,070	DKK	80,000,000	10,749,602	DKK	50,000,000	6,720,166
ES	Pts	4,425,000	26,595			28,957			24,624
FI			933,947			600,525			520,120
FR		Not used				415,914,236			280,000,000
HU		Not used		HUF	3,158,000,000	12,471,553	HUF	4,515,000,000	17,830,606
IE			4,571,000			3,436,067			3,378,367
NOMC	NOK	144,000,000	17,413,336	NOK	189,000,000	22,855,002	NOK	12,000,000	1,451,111
NOMFA	NOK	2,200,000	266,037	NOK	108,330,000	13,099,907	NOK	213,000,000	25,757,226
NL	NLG	5,000,000	2,272,727			4,500,000			2,000,000
UK	£	3,500	5,200	£	3,500	5,200	£	3,500	5,200
SE	SEK	265,000	29,132	SEK	370,000	40,633	SEK	370,000	40,633

The minimum sums insured per project vary considerably and, in countries which set minimum limits for selecting beneficiaries, the sums insured are geared to that amount.

- In France, the minimum sum insured for an exhibition is much higher than in other countries, because the minimum limit has been set at 46 million euro.
- In the United Kingdom, where no minimum limit has been set, state indemnity has been granted for small projects.
- In Norway, where state indemnity is only provided by the Ministry of Foreign Affairs for works loaned abroad, it is interesting to see that the funds committed by the State in 2003 amounted to €25,757,226.

The second table shows the highest sum insured for an exhibition in the last three years in each country.

MAXIMUM SUM INSURED FOR AN EXHIBITION									
Country	2001			2002		2003			
		Amount in national currency	Amount in euro	Amount in national currency	Amount in euro	Amount in national currency	Amount in euro		
DK	DKK	1,117,000,000	150,128,512	DKK	1,352,207,027	181,741,120	DKK	3,904,706,059	524,805,504
ES	Pts	15,000,000,000	90,151,816			89,797,057			112,016,045
FI			27,398,654			77,830,000			103,843,600
FR		Not used				609,454,094			1,924,647,391
HU		Not used		HUF	15,380,540,508	60,740,728	HUF	24,500,000,000	96,755,240
IE			50,016,639			4,571,000			80,252,546
NOMC	NOK	728,000,000	88,023,168	NOK	64,500,000	7,798,756	NOK	685,500,000	82,884,456
NOMFA	NOK	454,000,000	54,893,568	NOK	373,355,000	45,142,704	NOK	3,182,702,000	384,823,520
NL	NLG	25,000,000	11,363,636			45,378,000			21,000,000
UK	£	457,000,000	679,010,816	£	340,000,000	505,172,160	£	330,000,000	490,314,176
SE	SEK	1,072,628,888	117,795,560	SEK	1,064,482,000	116,900,872	SEK	1,358,212,000	149,078,512

The maximum sums insured per project vary considerably and, in countries which set maximum limits for selecting beneficiaries, the sums insured are geared to that amount.

In all the countries studied, apart from the Netherlands and the United Kingdom, there was an increase in the sums insured by state indemnity schemes between 2002 and 2003.

- In Finland and Sweden, this amount increased 1.5 times, in Denmark and France 3 times and in Norway and Ireland more than 8 times. This rise is indicative of the increase in risks undertaken by the countries for a single project.

In countries with no maximum limit, one project can single-handedly bring about a significant rise in this figure.

- In France, the coverage provided for the *Matisse Picasso* exhibition tripled the sum insured by state indemnity between 2002 and 2003.

The third table shows the overall amount insured annually in the last three years in each country.

OVERALL AMOUNT INSURED IN A YEAR									
Country	2001			2002		2003			
		Amount in national currency	Amount in euro		Amount in national currency	Amount in euro		Amount in national currency	Amount in euro
DK	DKK	3,294,100,000	442,738,016	DKK	3,583,200,457	481,594,080	DKK	7,646,074,456	1,027,657,856
ES	Ptas	61,626,567,591	370,383,136			402,699,068			951,094,082
FI			78,590,097			120,474,842			269,848,600
FR		Not used				1,025,368,420			4,529,732,105
HU		Not used		HUF	18,538,540,508	73,212,280	HUF	29,015,000,000	114,585,840
IE			68,833,621			8,007,067			161,595,146
NOMC	NOK	1,556,000,000	188,137,424	NOK	841,500,000	101,746,560	NOK	737,500,000	89,171,824
NOMFA	NOK	463,755,000	56,073,056	NOK	596,054,000	7,069,456	NOK	3,395,702,000	410,577,536
NL	NLG	30,000,000	13,636,364			77,760,000			28,000,000
UK	£	2,724,000,000	4,047,320,576	£	2,533,000,000	3,764,278,016	£	2,004,000,000	2,978,134,016
SE	SEK	2,690,775,051	295,341,792	SEK	3,520,232,138	386,383,712	SEK	2,965,204,426	325,463,392

In all the countries studied, apart from the United Kingdom and Norway (MC), there was an increase in the overall amounts insured by state indemnity schemes between 2001 and 2003.

- In Denmark, Spain, Ireland and the Netherlands, this amount increased 2 to 2.5 times, in Finland 3.5 times and in Norway (MFA) 7 times. This rise points to some countries' willingness to take on more risks.
- In France, the overall amount increased fourfold between 2002 and 2003 due to the coverage of two exhibitions requiring large sums, namely *Matisse Picasso* and *Gauguin Tahiti, l'atelier des tropiques*, which were held at the Galeries Nationales du Grand Palais.
- In the United Kingdom, the overall amount decreased by one quarter while the number of projects remained constant: more projects requiring smaller sums were covered.

B4 Functioning of the system and compensation mechanisms

I The way the system works

1 Institutions in charge of state indemnity

The ministries of culture and/or education and/or finances are the ones responsible for handling state indemnity applications (see address list provided in Annex V).

In some countries, certain institutions that are answerable to the ministries are charged with the management of state indemnity files.

- In Norway, a public institution answerable to the Ministry of Culture was created in January 2003: ABM-Utvikling, The Norwegian Archive, Library and Museum Authority.
- In the Netherlands, the Netherlands Institute for Cultural Heritage intervenes in decisions regarding the granting of state indemnity.

- In the United Kingdom, the applications made by national museums are handled by the Ministry of Culture, while the ever-increasing number of applications by privately-owned museums are administered by the Museums, Libraries and Archives Council.
- In Sweden, it is the National Council for Cultural Affairs, in association with the Kammarkollegiet, which is responsible for the management of the state indemnity scheme. It is interesting to note that the National Council for Cultural Affairs is answerable to the Kulturradet (Ministry of Culture), while the Kammarkollegiet (Legal, financial and administrative services agency) is under the authority of the Ministry of Justice. The Kammarkollegiet is responsible for insuring "state property", and hence works belonging to national museums; Swedish national museums are thus insured by this public institution because they are not permitted to take out commercial insurance.
- Denmark, Finland, France and Lithuania each have a special board that decides on a case by case basis whether state indemnity will be provided. The board is composed of government officials and experts in the field of culture and insurance.

2 Application procedures and contents

In most countries, the museum is required to apply to the appropriate institution three to six months before the commencement of the period of cover.

- In Germany, Lithuania and Norway (MFA), the applications have to be made in the year preceding the exhibition.

Generally speaking, an application should include:

a scientific presentation of the project;

the exhibition dates and period of state indemnity cover;

a list of the works to be exhibited and their agreed values;

a budget estimate;

report(s) from one or more insurance brokers consulted, in which the economies achieved from state indemnity coverage are mentioned;

a description of the transportation and packing of the works;

a Facilities Report (security conditions related to the storage and exhibition of art works).

- In Denmark, Spain, Finland, Italy and Norway, the loan agreements containing the lender's requirements for the exhibition of the works and/or reports on the condition of the works should be included.
- In Lithuania, the application should also include a statement by the institution concerned that it undertakes to pay the cost of damage out of its own funds, up to the cost of the deductible.

3 Security conditions

The security conditions related to the exhibition need to be approved by the institutions responsible for granting state indemnity. These institutions first verify that safety measures

are taken at the exhibition venues and that certain conditions are upheld during the transportation and escorting of the works for which indemnity is being requested.

The required security conditions are detailed and stringent so as to prevent the occurrence of damages to the greatest extent possible. If need be, the institutions requesting state indemnity are obliged to pay for the work needed to improve security conditions.

In fact, state indemnity schemes have helped to improve security conditions and the maintenance of the venues benefiting from the indemnity.

- *For the Matisse Picasso exhibition held in France, the Réunion des Musées Nationaux requested that an expert report on the venue be provided by an insurance company; this report was attached to the application for state indemnity.*

4 Guarantee certificates

The documents sent to the lenders as proof of state indemnity coverage differ from country to country: a guarantee certificate that simply mentions the scope of the cover, a certificate specifying the methods of compensation in the event of damage, or simply a copy of the agreement between the beneficiary and the relevant ministry. These documents are sometimes only available in the language of the country providing the indemnity.

Examples of guarantee certificates have been appended to this document.

- In France, given that commercial insurance and state indemnity are brought together under a single insurance policy, the lender obtains from the broker an insurance certificate with an attachment stipulating the date from which the state indemnity applies and providing confirmation of the deductible beyond which the State is financially liable in the event of damage.

II Compensation mechanisms

In the event of damage, the exhibition organiser must inform the lender, the insurer and the institution in charge of the state indemnity as soon as possible.

The state indemnity schemes cover the cost of restoring works which have been damaged and the depreciation of the works after restoration. If the damaged work belongs to a series or a set of works, most state indemnities cover the depreciation of the series or set. If the parties fail to reach an agreement, an expert is called in.

The amount of compensation allocated by the State is calculated in relation to the agreed value of the works approved by the borrower and the lender.

In some cases, the amount of compensation only corresponds to part of the agreed value, or the agreed value is called into question in the event of damage.

- In Italy, restoration and depreciation costs are restricted to 50% of the agreed value.
- A distinctive characteristic of Finland's state indemnity scheme is that the values agreed upon by the lender and borrower and accepted by the state indemnity board are viewed by that board as maximal figures that can be devalued.
- In the Netherlands, in the event that the selfsame existence of the work is called into question, the Ministry of Culture pays the entire compensation corresponding to

its agreed value and becomes the owner of the work. Should the lender wish to retain its ownership of the work in question, then the amount of compensation is negotiated.

- In Lithuania, the amount of compensation is decided on by a committee of experts irrespective of the agreed value.

As a rule, in the event of total loss of a work, the compensation provided corresponds to the agreed value; should a work be found after the lender has been compensated for total loss, the latter regains its work of art and is required to pay back the amount received as compensation, less the estimated cost of restoration and depreciation.

The State's commitment is, of course, directly linked to the amount of deductible charged, where such a deductible has been set.

In countries with a high deductible, such as France, public funds are not drawn upon unless the damage is substantial.

To date, there have been no cases of damage to works covered by a state indemnity, so the compensation procedures have not been tested, with the exception of the United Kingdom and Finland.

- In the United Kingdom, given the particularly low deductibles, public funds are drawn upon from the very first losses incurred. In the last ten years, the state indemnity scheme has provided compensation for an average of three cases of damage per year, for which the sums involved were described as insignificant by the government.
- In Finland, during the exhibition *Treasures from the Austrian Imperial Family. Masterpieces from the Kunsthistorisches Museum in Vienna* organised by the Tampere Art Museum and Pirkanmaan aluemuseo, the Finnish state indemnity scheme provided nail-to-nail coverage of the works exhibited from 6 March to 24 September 1995, during which period one work of art was damaged. The Ministry of Education paid the amount of FIM 2,592,332 (€435,998) as compensation.

C Countries without a state indemnity scheme

C1 State indemnity from the lender's point of view

Even though state indemnity is still a novel idea among countries which do not currently have such a system, most museums willingly accept the indemnity provided by other countries when they loan their works abroad.

- Even though museums in Belgium always choose private insurance over state indemnity, this is due more to a lack of knowledge about the system than an outright rejection of it.

The Royal Museums of Fine Arts of Belgium frequently accept foreign state indemnity: in 1992, they accepted British indemnity for the exhibition *Fabric of Vision: Dress and Drapery in Painting*, which was held at the National Gallery, and

have just accepted state indemnity from France for the Rubens exhibition at the Palais des Beaux-Arts in Lille.

- In Cyprus, the Archaeological Museum accepts foreign state indemnity, but this is still an unfamiliar concept for other museums. The State Gallery of Contemporary Art has for the first time ever accepted state indemnity from Ireland for a loan to the Irish National Gallery.
- Portugal's Ancient Art Museum accepted American state indemnity for the works loaned for the Vermeer exhibition, which was held at the Metropolitan Museum of Art in 2001, and English state indemnity for the Raphael exhibition held at the National Gallery of Art in 2004.

C2 Insurance costs

Since temporary exhibitions are essentially formed with loans, insurance costs are an important consideration: they represent an average of 20% of the exhibition budget and can even reach 40%, as is the case with the exhibition of icons from the Monastery of Sinai, held in 2004 at the Benaki Museum in Athens.

In recent years the cost of insuring works of art has risen in all the countries studied. In addition, museums wanting to obtain better risk coverage are obliged more and more to turn to insurance companies specialising in works of art.

- Until recently, some Cypriot museums sought to be insured by non-specialist insurance companies. In order to obtain specific coverage for their art works, the museums now have to turn to companies specialising in art insurance.

The Municipal Arts Centre is therefore going to take out insurance for its next exhibition, *Body Works, Sports and Contemporary Arts*, with a specialist company. Art insurance is all the more complicated in Cyprus given the island's location in a high-risk seismic zone and the fact that some countries, such as Italy, the United Kingdom and Spain, consider it to be a war risk zone.

- In Greece, European insurance companies were consulted for the exhibition *In the Light of Apollo, Italian Renaissance and Greece* organised by the National Gallery; an Italian insurance broker was eventually chosen. The same method was followed for *Six Leading Sculptors: Rodin, Bourdelle, Maillol, Brancusi, Giacometti, Moore*, planned to take place in 2004 as part of the Cultural Olympiad.
- In Estonia, the Kadriorg Art Museum is having problems finding an Estonian insurance company that is willing to cover an earthenware exhibition, given that the value of the objects exhibited is particularly high.

Many museums have eventually been forced to give up plans to mount an exhibition or borrow works because of exorbitant insurance premiums.

- In Latvia, the State Museum of Fine Arts had to abandon its plans for an exhibition on French impressionists and the Arzemju Makslas Muzejs (Museum of Foreign Art) the loan of a work by Caspar David Friedrich.

- The exhibition *The Centre of Europe Around 1000 A.D.*, a joint German, Polish, Slovakian and Hungarian project, could not be exhibited in Bratislava even though the Slovak Republic was one of the organisers and principal lenders.
- The Belem Cultural Centre had to give up its plans to borrow works from Russia for the exhibition *Malevitch and the Cinema*.

C3 Insurance costs covered by a third party

In the new Member States of the European Union which do not have a state indemnity scheme, museums do not have much room for manoeuvre when it comes to borrowing works because they cannot cover the insurance costs. If they wish to present works from foreign collections, often their only alternative is to accept exhibitions for which the insurance costs are covered by a third party, such as another country's Ministry of Foreign Affairs, the French Institute, the Goethe Institute, or private foundations.

- In Estonia, a Dürer exhibition held in 2004 at the Kadriorg Art Museum in Tallinn would not have taken place if the German Ministry of Foreign Affairs had not covered the insurance costs (€39,000) for 80 drawings by Dürer. These drawings were loaned to Estonia as a means of thanking the country for having authorised the return of a work by Dürer, which had been stolen, to the Kunsthalle in Bremen.
- In Greece, thanks to the support of the Niarchos Foundation, the National Gallery is able to organise exhibitions in partnership with foreign museums in order to promote Greek art. Works from the National Gallery were exhibited at the Hermitage Foundation in Lausanne for the exhibition titled *Du Greco à Delacroix* as part of this effort.

Of course, if state indemnity can be provided to cover exhibitions held abroad, this results in significant savings for the country hosting the exhibition.

- *In Iceland, The Golden Ages exhibition held at the National Gallery in 1992 was covered by the Finnish state indemnity scheme.*

Sometimes, countries without an indemnity scheme are able to host projects thanks to the state indemnity provided by other countries.

- *The Rebecca Horn exhibition to be held in 2005 at the Belem Cultural Centre in Portugal is feasible because the British and German state indemnities have each undertaken to cover the international transportation of the exhibition works, while the Belem Cultural Centre only needs to pay the insurance costs related to the exhibition venue in Lisbon.*

C4 Impact of study on knowledge of state indemnity schemes

Even though state indemnity schemes are still little or poorly known in some countries, the interviews carried out during this study have increased people's awareness of such schemes and have made a larger professional audience aware of their value in the organisation of exhibitions, particularly in terms of the money saved in insurance premiums.

This survey undoubtedly created a favourable climate with regard to the possible creation of a state indemnity scheme in some countries, particularly in Slovenia.

Country survey reports

GERMANY (federal level)

All the information provided in this report was obtained from the German government representative for culture and the media.

There is a state indemnity scheme in force in Germany.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>Deposits</i>	×
	<i>National collections excluded</i>	○
Scope	<i>Nail to nail</i>	×
Risks excluded		○
ELIGIBILITY CRITERIA		
Beneficiaries	<i>Certain national museums</i>	×
	<i>Other museums financed with public funds</i>	×
Minimum/maximum limit per project		○
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		○
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

Organisation of museums

According to the statistics available from the Institut für Museumskunde (Berlin), Germany has 6,059 museums. A large number of these museums are administered by cities and local communities (2,510) or by private associations (1,459). Only 491 are answerable to the federal government or the governments of the 16 *Bundesländer*. Moreover, 387 museums are managed by other legal persons governed by public law and 347 are under combined public and private administration. 505 museums are managed directly by private persons (natural persons) and 89 by private foundations. Lastly, 235 museums are run by companies or cooperatives.

Introduction of scheme

The matter of setting up a state indemnity scheme has been discussed since 1989, when the state-funded Art and Exhibition Hall was built in Bonn. Given that the hall was envisioned

from the very beginning as an exhibition space without its own collections, it was evident that problems would be encountered with the insurance costs for borrowed works. State indemnity was therefore chosen as a means of reducing these costs as much as possible. Over time, other institutions were also included in this system.

Regulations

State indemnity is dealt with in §3 I No. 5 of Federal Finance Act. Specific clauses on its implementation were introduced in the "conditions governing indemnity" expounded by the Ministry of Finance.

II State indemnity coverage

Works covered

Only borrowed works can be covered.

Scope

Works are covered from nail to nail.

Risks not covered

Indemnity is provided in the event of destruction, loss or damage, no matter the source (strike, war, nuclear accident, terrorist acts or vandalism). In addition, the indemnity covers any damage caused by thunderstorms, rain, hail, snow or lightning.

Damage caused by third parties is also covered.

III Eligibility criteria

Beneficiaries

Institutions that are only financed by the federal government may apply for state indemnity. For example, requests have already been made by the following institutions:

- Kunst- und Ausstellungshalle, Bonn
- Deutsches Historisches Museum, Berlin
- Alliiertenmuseum, Berlin
- Museum Karlshorst, Berlin
- Haus der Kulturen der Welt, Berlin
- Jüdisches Museum, Berlin
- Die Deutsche Bibliothek, Frankfurt/Main and Leipzig
- Casa di Goethe, Rome

Met opmaak:
opsommingstekens en
nummering

Selection criteria

Generally speaking, the scheme covers any project organised by institutions that are eligible for state indemnity.

Minimum limit

No general limit has been set.

IV The way the system works

Institutions

The federal government representative for culture and the media is responsible for awarding state indemnity.

Application procedures and contents

- First step: A sum allocated to state indemnity is adopted in the state budget each year, based on the demands made by the beneficiaries.
- Second step: The borrowing institution has to obtain a guarantee certificate for each project. An application – stating the exhibition name, type, duration, venue and an estimate of the insured value of the works exhibited – must therefore be submitted to the federal government representative for culture and the media. In this way the request is forwarded to the Ministry of Finance, which in turn addresses it to the Federal Securities Administration (Bundeswertpapierverwaltung). The Administration then issues a guarantee certificate.
- Third step: For every work of art loaned, a guarantee certificate bearing the signature and stamp of the federal government representative for culture and the media is issued. The lender receives the original, while the federal government representative for culture and the media and the borrowing institution are given a copy each.

If, for a single project, the indemnity exceeds 100 million euro, then the federal government representative for culture and the media is required to notify the Bundestag Budget Committee.

Evaluation mechanisms for works covered

The insurance value is provided by the lender. The declared value of each loan must be verified by the borrowing institution, which is required to verify that this value corresponds to the market price.

Required security conditions

All the beneficiary institutions comply with stringent international standards.

However, except for a general declaration, there are no other written regulations ratified by the federal government representative for culture and the media.

Deductible/Liability

No deductible or limit has been set.

Maximum amount covered by the indemnity

A maximum amount is set which corresponds to the amount adopted in the budget.

Cost of state indemnity

None.

V Compensation mechanisms in the event of loss, theft or damage**Procedures followed in the event of damage**

In the event of damage or loss, the borrowing institution must inform the lender without delay. If the damage is noted after the work of art has been returned to the lender, the latter then has a duty to inform the borrowing institution and the Federal Republic of Germany within six days. As soon as an agreement is reached between the borrowing institution and the lender regarding the restoration methods to be used, the borrowing institution then implements them. All damages reported by the lender to the borrowing institution are compensated within six weeks, according to the terms of the agreement made between the two parties.

Waiver of subrogation

There is no waiver of subrogation clause.

Compensation in the event of**- damage**

If the loan has been damaged, the lender and borrowing institution come to an agreement regarding the cost of restoration and the relevant amount is then reimbursed. If the work loaned decreases in value following its restoration, the lender and borrower will then have to estimate the amount of the depreciation. If an agreement cannot be reached, an independent expert approved by both parties is then called in, at the borrowing institution's expense, to determine the cost of restoration and loss in value.

- loss

If a loan is lost or totally destroyed then the agreed value stipulated in the contract must be paid.

Recovery of works after compensation

There are no regulatory measures on this issue.

Beneficiary of compensation

Compensation is paid to the lender.

VI Competent court and applicable law

The applicable legislation is German law and the competent court is the court of Bonn.

VII Experience and recommendations

Statistics

To date, compensation has been provided for all the claims made.

Experience as a borrower

In general, German state indemnity is widely accepted. Problems may, however, arise with private lenders: half of them prefer to use their own insurance system. Difficulties sometimes also arise with US museums.

GERMANY (*Bundesländer* level)

A complete study and comparative analysis of the German *Bundesländer* are provided in the annex of this report.

AUSTRIA

This report has been endorsed by Dr Martin Maxl, solicitor, developer of the recently enacted state indemnity system.

There is a state indemnity scheme in force in Austria.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	○
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>In situ terrorism</i>	×
	<i>Terrorism en route</i>	×
	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	○
	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		○
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

Organisation of museums

Austria has 135 museums, 11 exhibition centres and 193 similar institutions which are under *public administration*. Given the country's federal structure, a distinction should be made between central government, on the one hand, and the *Bundesländer* and local communities on the other. 7 museums and 14 institutions are placed under the administration of the central government, while the others are administered by the *Bundesländer* and communities.

Moreover, there are some 235 museums, 25 exhibition centres and 267 similar institutions that are managed and financed by the private sector.

Introduction of scheme

National museums, that is museums belonging to the state, were until recently government

institutions without any real legal capacity. They were granted full legal power between January 1999 and January 2002. As a consequence, the old state indemnity system ceased to exist automatically with the reorganisation of national museums as separate legal entities. Until the system's reintroduction, borrowed works had to be insured by private insurance companies.

In accordance with Section 2 of the 2002 Federal Act on National Museums (Bundesmuseengesetz 2002), state indemnity aims to reduce the insurance costs of national museums.

Regulations

State indemnity is regulated by Article IX(1), sub-paragraph 8, of the 2004 Federal Finance Act (Bundesfinanzgesetz, 2004), *Official Federal Journal BGBl I 42/2003*, amended in the *BGBl I 133/2003*. A special regulation, in the form of a "letter of indemnity", was published in April 2004.

The indemnity is issued by the Republic of Austria, which is represented by the Federal Minister of Finance.

II State indemnity coverage

Works covered

The scheme covers all works of art.

Scope

Works are covered from nail to nail.

Risks not covered

The "letter of indemnity" does not cover the following risks:

- all types of armed conflict – civil wars, revolutions, revolts, riots, insurrections, uprisings, strikes, lock-outs or any military or official action related to such incidents;
- terrorist acts
- nuclear disaster
- wear and tear or deterioration of works, and damage resulting from improper use
- malicious intent and negligence on the part of the lender
- any damage that has occurred irrespective of the exhibition
- any damage covered by a private insurance policy

III Eligibility criteria

Beneficiaries

State indemnity is only granted for temporary exhibitions organised by national museums when these museums are borrowers.

Selection criteria

The State assumes the responsibility on principle if the lender consents.

Minimum limit

No minimum limit has been set.

Maximum limit

Pursuant to Article IX, paragraph 1, sub-paragraph 8 of the 2004 Federal Finance Act, liability can be assumed for up to 100 million euro per project.

IV The way the system works

Institution

The borrower must submit its request for state indemnity to the Ministry of Education, Science and Culture, which will then forward the request to the Ministry of Finance.

Application contents

The application must include a description of the project and a list of the borrowed works.

Evaluation mechanisms for works covered

The works are insured according to their agreed value.

Required security conditions

The "letter of indemnity" stipulates that transportation needs to be carried out in such a manner so as to prevent any loss or damage.

The state indemnity scheme does not require any special security measures to be taken at the exhibition venues.

Deductible/Liability

No deductible.

Maximum amount covered by the indemnity

Pursuant to Article IX, paragraph 1, sub-paragraph 8 of the 2004 Federal Finance Act, the total value of the works covered by state indemnity cannot exceed one billion euro per year.

Cost of state indemnity

None.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

If any work has been damaged or lost, the national museum must notify the federal authorities and lender at once. The "letter of indemnity" also stipulates that the security company responsible in the event of fire, housebreaking, theft, burglary or suspicion of a criminal act must be informed and the notification of a claim must be forwarded to the Ministry of Finance.

Waiver of subrogation

There is no waiver of subrogation clause. At the request of the federal authorities, the lender must cede to them the right to take action against a third party.

Compensation in the event of

- damage

The federal authorities and lender come to an agreement regarding the amount of compensation to be paid. If an agreement cannot be reached, the amount is determined by internationally recognised experts.

- loss

In the event that the work loaned is totally destroyed or lost, the federal authorities compensate the lender according to the agreed value.

Recovery of works after compensation

If a loan is lost during the period covered by the "letter of indemnity" and found after compensation has been paid, the lender is required to accept the returned loan and refund the compensation received. The loan must be returned and the compensation simultaneously refunded within six months of notifying the lender.

VI Competent court and applicable law

The "letter of indemnity" comes under Austrian legislation, without reference to the provisions of international private law. The disputes arising with respect to the "letter of indemnity" are subject to the exclusive jurisdiction of the competent court in Vienna.

VII Experience and recommendations

Statistics

There was no state indemnity scheme in place between 2000 and 2004. The new system came into force on 30 March 2004. No compensation has been provided since then.

Experience as a lender

In 2003, the Kunsthistorisches Museum accepted state indemnity for the following exhibitions: *From El Greco to Dali* (National Museum, Stockholm), *Titian* (National Gallery, London), *Hans Holbein* (Mauritshuis, The Hague), *Franz Hals* (Kunsthalle, Hamburg) and exhibitions held in Sydney and Melbourne.

In 2004, the Kunsthistorisches Museum accepted state indemnity for the following exhibitions: *Rubens* (Musée des Beaux-Arts, Lille), *Byzantium Faith and Power* (Metropolitan Museum, New York), *Rubens* (Herzog Anton Ulrich Museum, Brunswick), *Glaube und Macht* (Hartenfels Castle, Torgau) and *Dürer* (National Gallery, London).

Experience as a borrower

In general, foreign private lenders prefer to take out commercial insurance because the lender's rights and obligations stipulated are more satisfactory for them.

Recent developments

The system has just been set up.

BELGIUM

This report has been endorsed by Anne-Marie van den Hul, jurist
Prime Minister's Office
Scientific, Technical and Cultural Affairs
There is no state indemnity scheme in force in Belgium.

I Organisation of museums

Belgium is divided into three regions, namely the Walloon Region, the Flemish Region and the Brussels Region, and three communities, namely the French Community, the Flemish Community and the German-speaking Community. According to the constitution, culture falls within the sphere of community competence. Nevertheless, four museums come under federal jurisdiction: the Royal Museums of Fine Arts of Belgium, the Royal Museums of Art and History, the Royal Museum for Central Africa and the Royal Belgian Institute of Natural Sciences. These are federal scientific establishments that are answerable to the Federal Minister for Scientific Policy.

II Ongoing discussions

The institutions approached both at the community and the federal level do not have any state indemnity system and prefer to take out policies with insurance companies specialising in exhibitions.

The subject of state indemnity has, however, begun to be debated in Belgium.

It should be noted that the country's major museums have sufficient security for a state indemnity system to be set up in Belgium.

III Insurance costs

Insurance costs have risen in Belgium in recent years and a state indemnity scheme would facilitate the organisation of exhibitions.

IV Experience as a lender

When lending works from its collections, the Ministry of Culture of the French Community prefers to have its own insurer.

The Royal Museum of Fine Arts in Antwerp, which is answerable to the Flemish Community, prefers to have its works ensured by private companies.

However, it seems that although Belgian museums have up till now preferred private insurance over state indemnity, this is due more to a lack of knowledge about the system than a decision made on principle.

The Royal Museums of Fine Arts of Belgium do accept state indemnities. In particular, they accepted British indemnity in 2002 for the exhibition *Fabric of vision: Dress and Drapery in Painting*, which was held at the National Gallery in London, and have just accepted indemnity from France for the *Rubens Universel* exhibition at the Palais des Beaux Arts in Lille.

BULGARIA

This report has been endorsed by Rozalia Gigova, from the Ministry of Culture, National Centre of Museums, Galleries and Arts.

There is a state indemnity scheme in force in Bulgaria.

COVERAGE		
Works covered	<i>Outgoing loans</i>	×
	<i>National collections excluded</i>	○
Scope	<i>Nail to nail</i>	×
Risks excluded		○
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
Minimum/maximum limit per project		○
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		○
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

The law on the protection of cultural development came into force in 1999. Article 22 focuses on state indemnity schemes.

II State indemnity coverage

Works covered

State indemnity can only be granted for loans travelling beyond the country's borders if Bulgaria is the lender. In this context, all works shown in an exhibition can be insured.

Scope

Works are covered from nail to nail.

Risks not covered

All the risks that are usually covered by a private insurance company specialising in art works are also covered by the state indemnity scheme, with the exception of *force majeure*.

III Eligibility criteria

Beneficiaries

It is not the museums that are demanding a state indemnity system, but the State itself, which hopes to promote Bulgarian culture by holding exhibitions abroad that are organised by its own museums.

Selection criteria

The following selection criteria are employed:

- the value of the work of art (only works of great value can be covered by the state indemnity system – no minimum value has been indicated)
- the dissemination of Bulgarian culture

Minimum and maximum limits

No information available.

IV The way the system works

Institution

Applications for state indemnity are managed by the National Centre of Museums, Galleries and Arts, but it is up to the Ministry of Culture to prepare all the documents concerning the exhibition to be organised abroad. The Ministry of Foreign Affairs then ratifies the documents, followed by which the Ministry of Finance grants state indemnity.

Application procedures and contents

The National Centre of Museums, Galleries and Arts is the decision-making body for exhibitions. If it decides that the exhibition can be covered by state indemnity, the request is forwarded to the Minister of Culture. If the latter provides his approval, the legal department of the Ministry of Culture prepares an edict which is then submitted to the Cabinet. If the vote is in favour, the Ministry of Finance grants state indemnity.

The following documents are required:

- the contract between borrower and lender
- a list of the works and their insured values (determined by an independent board of examiners)
- the documents required for transportation and customs formalities

Evaluation mechanisms for works covered

The value declared by the museum or gallery lending the work(s) is accepted.

Required security conditions

Exhibition venues must comply with international standards.

Deductible/Liability

No deductible has been set.

Maximum amount covered by the indemnity

Article 8.I.1. of the National Debt Act stipulates that the maximum value covered by the indemnity must be estimated in every state budget.

Cost of state indemnity

There is no administrative cost.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

No provision has been made.

Waiver of subrogation

No provision has been made.

Compensation in the event of

- damage

The lender receives sufficient compensation to cover restoration costs.

- loss

No provision has been made for the loss of a work of art.

Recovery of a work of art following compensation

No provision has been made.

Beneficiary of compensation

Compensation is paid to the museum or gallery that lent the work(s).

VI Competent court and applicable law

Bulgarian law is applicable and the court of Sofia has legal jurisdiction. If the borrower does not recognise the competence of the latter, the matter falls under the jurisdiction of the International Court of Justice in The Hague.

VII Experience and recommendations

Problems and limitations of the system

The Bulgarian system only covers works loaned abroad. It is impossible to insure works borrowed from other countries due to the strict regulations of the Bulgarian Monetary Committee and the existing agreement between the Bulgarian State and the World Bank.

Statistics

There have been two cases in which the state indemnity system for art loans has been put to use since its inception:

- the *Europalia Festival* in Brussels, to which four exhibitions were sent
- the *Days of Bulgarian Culture* held in Moscow in 2003, for which four exhibitions were sent.

In these two cases, the organisation took place with the help of the Ministry of Culture.

Recommendations

A European fund should be created to provide indemnity. Each Member State should pay a contribution by means of automatic transfers.

CYPRUS

This report has been endorsed by Dr Eleni S. Nikita.
(Director of Cultural Services, Ministry of Education and Culture)

There is no state indemnity scheme in force in Cyprus.

Only Greek Cypriot institutions were included in the survey conducted in Cyprus.

I Organisation of museums

Nicosia has three state museums: the State Gallery of Contemporary Art and the National Struggle Museum, which come under the authority of the Ministry of Education and Culture, and the Archaeological Museum of Cyprus, which is answerable to the Ministry of Communications and Works.

There are also municipal museums, such as the Leventis Museum in the city of Nicosia and the Municipal Arts Centre which is housed in the old power station and devoted to contemporary art.

II Ongoing discussions

State indemnity is still a new concept for most of the museum officials contacted during this survey. Nevertheless, some looked on the idea of state indemnity with favour, because the funds saved through this system would make it possible to borrow more works and co-organise exhibitions with foreign museums.

Other officials, however, felt that Cypriot museums borrow much too small a number of works from abroad to justify the establishment of such a system in Cyprus.

III Insurance costs

Until recently, some Cypriot museums took out policies with insurance companies not specialising in art works. However, in order to obtain specific coverage for art works, the museums have to turn to specialist companies. The Municipal Arts Centre is therefore going to insure its next exhibition, *Body Works, Sports and Contemporary Arts*, with just such a company.

Art insurance is all the more complicated in Cyprus given the island's location in a high-risk seismic zone and the fact that some countries, such as Italy, the United Kingdom and Spain, consider it to be a war risk zone.

On the other hand, no lender has as yet demanded cover against terrorism.

IV Experience and recommendations

Experience as a lender

The Archaeological Museum of Cyprus accepts foreign state indemnities. Other museums are still not familiar with this system. The State Gallery of Contemporary Art has for the first time ever accepted state indemnity – from Ireland – for a loan to the Irish National Gallery.

Experience as a borrower

One of the reasons why museums in Cyprus organise their exhibitions around their own collections and borrow very few works from abroad is that they do not always comply with the security conditions required by foreign lenders.

Recommendations

Museum professionals in Cyprus would like a network of museums arranged according to speciality to be created.

DENMARK

This report has been endorsed by Henrik Bjerre, Head Conservator of the Statens Museum for Kunst.

There is a state indemnity scheme in force in Denmark.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	○
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
	<i>Private museums</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		Y

I Introduction

Organisation of museums

Denmark has seven national museums and some one hundred and fifty museums are subsidised by the State. The seven national museums are: Dansk Jagt- og Skovbrugsmuseum, Dansk Landbrugsmuseum, Den Hirschsprungske Samling, Nationalmuseet, Ordrupgaard and the Statens Museum for Kunst.

Introduction of scheme

State indemnity was introduced in Denmark in 1984 in order to deal with rising insurance costs.

Regulations

Article 32 of paragraph 10 of the Museums Act refers to the Danish state indemnity system. The regulations issued by the Ministry of Culture are attached to this document.

II State indemnity coverage

Works covered

Danish state indemnity covers all borrowed works, without any exception. However, the state indemnity board pays particular attention to the nature of the works, particularly in contemporary art, where some works are made up of perishable materials. Deposits are not covered.

Scope

Works are covered from nail to nail.

Risks not covered

Any damage resulting from previous restorations, nuclear accidents, acts of war or hostilities is excluded.

There is *a priori* inclusion of the risk of terrorism, given that it is not specified in the risks not covered.

III Eligibility criteria

Beneficiaries

As a rule, all museums can apply if they comply with the security conditions specified by the state indemnity board.

Selection criteria

The Danish state indemnity scheme favours projects with works of high artistic or cultural value.

Minimum and maximum limits

Each project's insurance value must be at least DKK 10 million.

Each project's insurance value should not, as a rule, exceed DKK 2 billion; however, state

indemnity can be granted for larger sums, provided the Ministry of Finance gives its approval.

IV The way the system works

Institution

The Ministry of Culture is the body responsible for granting state indemnity, based on the advice of the state indemnity board, which is composed of experts appointed to serve on the board for a period of four years.

Application procedures and contents

Museums have to send their applications to the Ministry of Culture by the following dates:

- for exhibitions that need to be insured as of 1 May, applications must be sent by 1 January at the latest
- for exhibitions that need to be insured as of 1 September, applications must be sent by 1 May at the latest
- for exhibitions that need to be insured as of 1 January, applications must be sent by 1 September at the latest.

An application should include:

- a scientific presentation of the project
- the exhibition dates and period of state indemnity cover
- a list of the works to be exhibited and their insured values
- the lender's requirements for the exhibition of the works
- the loan agreements
- a description of the transportation of the works; in addition, approval is required from the Ministry of Culture for the transportation of works whose insured value is at least DKK 150 million.
- the Facilities Report and the security conditions related to the transportation, storage and exhibition of the works

Evaluation mechanisms for works covered

The works are insured according to their agreed value.

Required security conditions

The security conditions related to the transportation, storage and exhibition of the works must be approved by the state indemnity board; particular attention is paid to aspects pertaining to the arrangement of the works in the museums, in particular the showcases.

Deductible/Liability

A deductible has been set at three levels:

Insured value of works	Deductible
Below DKK 0.5 billion	DKK 100,000
Between DKK 0.5 billion and 1 billion	DKK 200,000
Above DKK 1 billion	DKK 300,000

Danish national museums are not permitted to turn to private insurance companies, the only exception being the insurance taken out by lenders. In the event of damage, national museums are therefore required to pay for the cost of damage out of their own funds up to the cost of the deductible.

Private museums can choose between bearing the cost of possible cases of damage themselves and taking out a policy with an insurance company.

Maximum amount covered by the indemnity

The amount covered by the Danish state indemnity scheme cannot exceed DKK 4 billion at one time.

If the amount covered by the indemnity scheme for a single exhibition is more than DKK 0.5 billion, the relevant board of the Finance Ministry must be informed.

Cost of state indemnity

State indemnity is provided free of charge.

State guarantee certificates

The museum issues guarantee certificates that are countersigned by the Ministry of Culture. Danish guarantee certificates specify the scope of coverage and the procedures followed in the event of damage.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the museum must immediately notify the lender and Ministry of Culture and must provide an estimate of the resulting cost.

Waiver of subrogation

The Ministry of Culture has the right to take action against the organisers or third parties acting on their behalf.

Compensation in the event of

- damage

In the event of damage, restoration and depreciation costs are estimated by the lender, following consultation with the borrower and state indemnity board. If the parties are unable to reach an agreement, an expert is called in.

- loss

In the event of total loss of a work, compensation is based on the work's agreed value.

Recovery of a work of art following compensation

In the event that a work is found after the lender has been compensated for total loss, the latter retrieves its work and must return the compensation received after having deducted the estimated cost of restoration and depreciation.

Institution responsible for compensation

In the event of damage, the Ministry of Finance bear the cost of compensation.

Beneficiary of compensation

The beneficiary of the compensation is the museum, which pays the lender the deductible and the compensation allocated by the Ministry of Finance.

VI Competent court and applicable law

Danish law is applicable in the event of disputes. The competent court is the court of Copenhagen.

VII Experience and recommendations

Problems and limitations of the system

The state indemnity board is sometimes reluctant to insure contemporary art.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition in DKK	Maximum sum insured for an exhibition in DKK	Overall amount insured for the year in DKK
2001	5	5	0	11,000,000	1,117,000,000	3,294,100,000
2002	6	6	0	80,000,000	1,352,207,027	3,583,200,457
2003	5	5	0	50,000,000	3,904,706,059	7,646,074,465

Experience as a lender

The museum professionals contacted are favourably inclined towards state indemnities from other countries. They are acquainted with the English, Spanish, American and Swedish state indemnity schemes.

Experience as a borrower

Danish state indemnity is generally accepted by lenders; the latter do, however, require that acts of war are also covered. The professionals thus believe that this risk should also be included in the state indemnity coverage.

Recommendations

Since damage is more likely to occur during transportation than when the works are exhibited, the security conditions required during transportation should be specified and the escorts specially trained.

The liability limits of each party should also be specified in greater detail.

Recent developments

Up until 2001, the Danish indemnity scheme only covered works that were borrowed from abroad. Today, Danish art works are also included.

SPAIN

This report has been endorsed by Benito Burgos Barrantes, Museum Conservator, Directorate General of Fine Arts and Cultural Goods, Sub-directorate General of the Protection of Historical Heritage of the Ministry of Education, Culture and Sports.

There is a state indemnity scheme in force in Spain.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>Deposits</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	○
	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		×

I Introduction

Organisation of museums

Spain has seventeen national museums, which come under the authority of the Ministry of Education, Culture and Sports. Some of these museums, such as the Prado Museum and the Reina Sofia Museum, retain autonomy in management.

Introduction of scheme

State indemnity was set up in 1988 for a loan of the collection of Baron Thyssen-Bornemisza; this collection was donated to Spain three years later.

Regulations

Reference is made to the Spanish indemnity scheme in the ninth clause of Act No. 16 on Spanish historical heritage of 25 June 1985 (see annex). Royal Decree No. 1680 of 15 November 1991 explains the relevant implementation methods.

Each year, the maximum insurable sum per project for that particular year is specified in the Finance Act (see annex: 2004 Finance Act). The decree and some parts of the 2004 Finance Act have been translated into English (see annex).

This study does not cover the autonomous communities.

II State indemnity coverage

Works covered

The Spanish state undertakes to insure items of historical, palaeontological, archaeological, ethnographical, scientific or technical value, with the exception of works belonging to Spain's national collections. Deposits are also covered by the country's state indemnity scheme.

Scope

The indemnity provides nail-to-nail coverage, from the moment the work is removed from the lender's premises up to 30 days after it has been returned.

Risks not covered

Damage resulting from wear and tear, misdeeds on the part of the owner, nuclear accidents and even the seizure of a work of art by a third party are not covered. The risk of terrorism is covered during transportation and *in situ*.

III Eligibility criteria

Beneficiaries

The potential beneficiaries of the scheme are the establishments that are answerable to the Ministry of Education, Culture and Sports; museums, libraries and archives that come under the exclusive authority of this ministry are able to apply for state indemnity, as are autonomous establishments such as the Prado Museum and the Reina Sofia Museum.

Government agencies for Spanish cultural action abroad and cultural commemorations can from now on also benefit from the indemnity scheme, as long as the events are held in venues belonging to the State.

State indemnity is not available to museums under the supervision of the autonomous communities.

Selection criteria

The Spanish state insures works of cultural interest.

Minimum and maximum limits

No minimum limit has been set for an institution to be eligible for state indemnity.

The maximum sum insured is usually 200 million euro per project. In exceptional cases, this amount can reach 2,500 million euro if proposed by the Minister of Finance and approved by the Cabinet.

The maximum sum stipulated in the 2004 Finance Act is 540.91 million euro for the collection of the Baroness Carmen Thyssen-Bornemisza.

IV The way the system works

Institution

The Spanish state indemnity scheme is administered by the Directorate General of Fine Arts and Cultural Goods, Sub-directorate General of the Protection of Historical Heritage of the Ministry of Education, Culture and Sports.

Application procedures and contents

Requests for state indemnity should be sent to the Ministry of Education, Culture and Sports two to three months before the exhibition opening.

An application must include:

- a scientific presentation of the project
- the exhibition dates and period of state indemnity cover
- a list of the works to be exhibited and their agreed values
- reports on the condition of the works
- the loan agreements in which the lenders consent to the works being covered by the state indemnity scheme
- the lender's requirements for the exhibition of the works
- a description of the transportation of the works
- a Facilities Report (security conditions related to the exhibition of the art works) and the measures taken with regard to conservation, packing, transportation and security

Evaluation mechanisms for works covered

The works are insured according to their agreed value.

Required security conditions

Security conditions are verified by the Ministry of Education, Culture and Sports.

Deductible

Article 6 of Royal Decree No. 1680 of 1991 determines the deductibles in excess of which the state assumes the risks. Cover is taken out with private insurance companies for amounts below these values.

Four deductibles are defined, depending on the overall value of the works covered:

- €12,020.42 when the total value of the works insured does not exceed €1,502,530.26
- €21,035.43 when the total value of the works insured lies between €1,502,530.26 and €7,512,651.30
- €36,060.72 when the total value of the works insured lies between €7,512,651.30 and €15,025,302.61
- €60,101.21 when the total value of the works insured is over €15,025,302.61.

Maximum amount covered by the indemnity

The maximum sum that can be insured is 1,600 million euro per year (whereas the maximum sum per project can, in exceptional cases, reach 2,500 million euro).

Cost of state indemnity

State indemnity is provided free of charge.

State guarantee certificates

The Ministry of Education, Culture and Sports publishes its decisions regarding compensation in the official journal; these decisions must first be ratified by the *Junta de Qualificación* and financial and legal departments of the Ministry of Education, Culture and Sports.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the museum must notify the lender and the Directorate General of Fine Arts of the Ministry of Education, Culture and Sports without delay.

Waiver of subrogation

A waiver of subrogation clause is included. The decree stipulates that the government cannot take action against the packers, carriers or any other person or institution involved in the

transportation, storage or installation of the works, unless the destruction, loss, theft or damage is imputable to a negligent or wrongful act on their part.

Compensation in the event of

-damage

In the event of damage, restoration and depreciation costs are estimated by the museum in consultation with the lender and the Ministry of Education, Culture and Sports, and cannot exceed the agreed value. If the parties are not able to reach an agreement, an expert is called in.

-loss

In the event of total loss of a work, compensation is based on its agreed value.

Recovery of a work of art following compensation

In the event that a work is found after the lender has been compensated for total loss, the latter retrieves its work and must return the compensation received, less the estimated cost of restoration and depreciation.

Institution responsible for compensation

The Ministry of Education, Culture and Sports bears the costs of any damage that may occur.

Beneficiary of compensation

The Ministry of Education, Culture and Sports pays the compensation directly to the lender, while the borrower has to approach the insurance company with respect to the payment of the deductible.

VI Competent court and applicable law

The competent court is that of Madrid. Spanish law is the applicable law.

VII Experience and recommendations

Problems and limitations of the system

Even though the maximum insurable sum per project is increased each year, it is still too low in the opinion of museum professionals: it is essentially set at 200 million euro, whereas the value of an average project lies between 300 and 400 million euro. For large projects, organisers only apply for state indemnity cover for those works with the highest insurance value, since the maximum limit is reached very quickly.

In 2003, the Prado Museum was only able to cover seven of the forty-one works on loan for

the *Vermeer and the Dutch Interior* exhibition and only four of the thirty-one works on loan for the *Titian* exhibition by means of state indemnity. In the *Manet at the Prado* exhibition held in 2004, only four of the one hundred and eleven loans were covered by state indemnity.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001		9		4,425,000 Pts	15,000,000,000 Pts	61,626,567,591 Pts
2002		10		€28,957	€89,797,057	€402,699,068
2003		10		€24,624	€112,016,054.61	€941,094,082

Grounds for refusing state indemnity

Lenders are sometimes reluctant to accept Spanish indemnity because of a lack of knowledge about the cover provided by the scheme.

Experience as a lender

Spanish museums accept foreign state indemnities.

Experience as a borrower

According to the museum professionals that were contacted, the insurance market in Spain has changed since 11 September 2001. It has become increasingly difficult to insure exhibitions and these professionals are thus more and more inclined to make use of the state indemnity scheme.

The Reina Sofia Museum requested state indemnity for the very first time for the Jonathan Lasker exhibition held in 2003. In 2004, it applied for indemnity for the Schnabel and Liechtenstein exhibitions. In the latter case, the exhibition, which has been organised together with the Louisiana Museum (Denmark) and Whitechapel Art Gallery (United Kingdom), will be covered by the Danish, English and Spanish indemnity schemes.

Recommendations

The museum professionals contacted would like:

- the works belonging to Spain's national collections to be covered during transportation when exhibitions are organised together with other institutions
- the deductible to be reduced and perhaps even abolished
- an increase in the maximum sum that can be insured per project
- simpler implementation methods
- the harmonisation of risks covered and not covered by different state indemnity schemes

Recent developments

In 2004, the guaranteed sum insured by the indemnity scheme for each exhibition increased markedly from 120 million euro to 200 million euro.

As regards the total insurable sum per year, it rose from 1,050 million euro to 1,600 million euro.

In special cases the highest insurance value per project may reach 2,500 million euro if proposed by the Finance Minister and approved by the Cabinet.

It is expected that the procedures will be simplified so that the indemnity scheme will be used by more museums and also for smaller projects.

ESTONIA

This report has been endorsed by Kadi Polli, Kadriorg Art Museum, Tallinn, Estonia.

There is no state indemnity scheme in force in Estonia.

I Ongoing discussions

State indemnity schemes are not unknown in Estonia. Provision is made in the Estonian Finance Act for state indemnity, but only as regards the borrowing of money, thus excluding works of art. According to the information provided by the Ministry of Culture, the establishment of a state indemnity system for cultural goods, whose beneficiaries would be the national and private museums in the country, is today being debated within the institution, however, discussions are still at a preliminary stage. The main difficulty lies in the lack of financial means, seeing that provision for these funds would have to be made in the budget. If the debate had a favourable outcome within the Ministry, approval would then have to be obtained from the Ministry of Finance. The creation of a state indemnity scheme in Estonia therefore still seems a distant prospect.

II Insurance costs

Generally speaking, a work of art that is exhibited in an Estonian museum is not insured if it belongs to the State or if it has been borrowed from a private lender. Consequently, on the one hand Estonian insurance companies are not specialised in art insurance and are neither prepared to insure such works of art, and on the other hand museums do not have any experience as regards insurance costs. For this reason the Kadriorg Art Museum had difficulty finding a company to insure an exhibition of earthenware organised in collaboration with Finland, Denmark and Sweden. Estonia's large insurance companies were not able to respond to the museum's call for tenders due to the relatively high value of the items that needed to be insured (1.8 million euro).

III Existing security levels

Only the recently renovated Kadriorg Art Museum (Art Museum of Estonia) fully complies with international standards.

IV Examples of exhibitions cancelled owing to insurance premiums

Because of the high insurance premiums, the Kadriorg Art Museum had to give up the idea of holding an exhibition on Flemish art, which would have been an opportunity to exhibit paintings borrowed from the Netherlands.

V Experience as a lender

According to the information provided by the Kadriorg Art Museum, the only way to bring art works or temporary exhibitions to Estonia is for the lenders to agree to bear the insurance costs.

In April 2004, a *Dürer* exhibition was able to take place at the Kadriorg Art Museum in Tallinn because the insurance costs for eighty prints by Dürer, which were loaned by the Bremen Kunsthalle, were assumed by the German Ministry of Foreign Affairs. This gesture was a way of thanking Estonia for returning a stolen Dürer painting to the Kunsthalle in Bremen.

At present, the organisation of exhibitions is dependent on whether partners with the required financial resources will be found (exchanges with Bulgaria or Romania are therefore barely possible). The chances that international exhibitions will be organised are, for this reason, very slim.

VI Cases of damage

No damage has been reported.

VII Recommendations

Small exhibitions should be covered by private insurance companies or by a state indemnity scheme. A European indemnity system would be a very good solution for larger projects that can be covered neither by the State's budget nor by museum budgets.

FINLAND

This report has been endorsed by Kirsti Enäjärvi, jurist, state indemnity board secretary.

There is a state indemnity scheme in force in Finland.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>Outgoing loans</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
	<i>Certain intervals excluded</i>	×
Risks excluded		○
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		×
Waiver of subrogation		○

I Introduction

Organisation of museums

Finland has three state museums: the National Museum (National Board of Antiquities), the Museum of Natural History and the National Gallery, which has three exhibition venues: the Sinebrychoff Art Museum, the Ateneum Art Museum and the Kiasma Museum.

There are also some forty regional museums in the country.

Introduction of scheme

A state indemnity scheme was set up in Finland at the demand of the state museums, the Ateneum Art Museum in particular, in order to meet insurance costs. In the 1980s, the Finnish state did grant indemnity, but there was no specific legislation in force. In 1984, a committee

was formed in order to draft an act.

Regulations

The Finnish state indemnity scheme is governed by Act No. 411 of 30 May 1986 and the methods of implementation are stipulated in Decree No. 445 of 6 June 1986. The Finnish version and English translation of the Act and Decree are attached. The Act in question concerns art and history exhibitions as well as other cultural spheres.

There are guidelines available for lenders, which will soon be translated into English.

II State indemnity coverage

Works covered

The Finnish indemnity scheme covers borrowed works that are exhibited in Finland and Finnish works exhibited abroad in exhibitions organised by Finnish institutions, as was the case with the exhibition titled *The Art of Finland: Land of Nature and Living Myth*; it was organised by the Kiasma Art Museum and presented at three venues in Japan in 2003 and 2004 (Yamaguchi Prefectural Museum of Art, Gunma Museum of Art and Sendai Mediatheque).

Finnish national works of art exhibited in Finland as well as deposits cannot be covered.

Scope

The state indemnity scheme provides nail-to-nail coverage; however, the organiser or Ministry of Education is permitted to limit the scope of application by only covering part of the exhibition or venues, or even excluding the transportation of the works if the risks are too high.

Risks not covered

No risk is excluded. Terrorism is also included and if an insurance policy taken out by the lender excludes this risk, it can be covered by the state indemnity scheme.

III Eligibility criteria

Beneficiaries

Finnish indemnity can be granted to a national public corporation or a national foundation with public-interest status.

Selection criteria

Projects of international scope, dealing with aspects of the history of art or civilisation, are eligible.

Minimum and maximum limits

The board rarely awards state indemnity for projects whose overall insurance value is lower than €500,000.

The maximum amount insured by the Finnish indemnity scheme is 125 million euro per exhibition. For values higher than 54 million euro, approval is required from the Ministry of Finance.

IV The way the system works

Institution

The Ministry of Education is responsible for granting state indemnity following a proposal by the state indemnity board. The board consists of a chairman (official of the Ministry of Education) and nine other members, who are appointed for a period of three years. The board members should have specialist knowledge in the following fields: the arts, cultural life, exhibitions, fire safety, transportation, insurance and conservation. The secretary on the state indemnity board is a jurist.

Application procedures and contents

The borrowing institution must apply for indemnity to the Ministry of Education at least three months before the commencement of indemnity coverage. If the value covered by the indemnity is greater than 54 million euro, the Ministry must be informed six months earlier.

Applications must include:

- the loan agreements
- a description of the exhibition's significance in terms of artistic value or with regard to the history of civilisation and its impact on the development of international cultural exchanges
- a list of the works to be exhibited and their insured values
- a description of the exhibition venues
- a description of the personnel responsible for organising the exhibition and the security measures and transportation and escorting conditions related to the exhibition
- the exhibition budget
- a report from the insurance companies consulted
- a description of checks made on the condition of the works

Evaluation mechanisms for works covered

The works are insured according to their agreed value.

Required security conditions

Exhibition venues should meet all the requirements in terms of fire safety and other security related matters. Transportation, packing, unpacking and the inspection of the condition of the art works should be carried out as prescribed. The appropriate packaging should be used when packing the works of art.

Deductible/Liability

The deductible payable by the organiser is €18,000 when the insured value of the works does not exceed 54 million euro, €36,000 when the insured value of the works is between 54 million euro and 90 million euro, and €54,000 when the insured value of the works is greater than 90 million euro.

Maximum amount covered by the indemnity

The total insured value covered at one time may not exceed 550 million euro.

Cost of state indemnity

The beneficiary must pay the Ministry of Education a fixed fee of €185.

State guarantee certificates

No certificates are issued that can be sent to the lenders. The beneficiary institution sometimes has the decision of the Ministry of Education translated into English.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the exhibition organiser must immediately inform the Ministry of Education of any damage suffered, also indicating the desired compensation. The board must be consulted regarding the amount of compensation to be paid.

Waiver of subrogation

The Ministry of Education has the right to take action against the organisers.

Compensation in the event of damage

A distinctive feature of Finland's state indemnity scheme is that the values agreed upon by the lender and borrower and accepted by the state indemnity board are viewed by that board as maximal figures that can be devalued in the event of damage.

In the event that damage does occur, the compensation provided corresponds to the restoration and depreciation costs determined by an expert chosen by the Ministry and the museum.

Recovery of a work of art following compensation

Should a work be found after the lender has been compensated for total loss, the latter regains its work of art and is required to pay back the amount received as compensation, less the estimated cost of restoration and depreciation.

Institution responsible for compensation

The Ministry of Education pays the damages following consultation with the state indemnity board.

Beneficiary of compensation

The compensation is paid to the beneficiary, which then forwards it to the lender.

VI Competent court and applicable law

The applicable law in the event of a dispute is Finnish law and all such matters fall under the jurisdiction of the court of Helsinki.

VII Experience and recommendations

Experience with regard to damage

The Finnish state indemnity scheme provided nail-to-nail coverage of the works shown at the exhibition titled *Treasures from the Austrian Imperial Family. Masterpieces from the Kunsthistorische Museum in Vienna*, which was organised in 1995 by the Tampere Art Museum and Pirkanmaan aluemuseo. One work of art was damaged during the exhibition and the Ministry of Education paid the amount of FIM 2,592,332 as compensation.

Problems and limitations of the system

The state indemnity board is reluctant to cover new media art, which is composed of videos, screens, computers, cameras, which can easily be replaced if damaged. For example, in the *Ars 01* exhibition organised by the Kiasma Museum of Art in 2001, only 10% of the works

exhibited were covered by the state indemnity scheme.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition in €	Maximum sum insured for an exhibition in €	Overall amount insured for the year in €
2001	12	12	0	933,947	27,398,654	78,590,097
2002	12	12	0	600,525	77,830,000	120,474,842
2003	29	29	0	524,120	103,843,600	269,848,600

Grounds for refusing state indemnity

Lenders sometimes refuse to accept Finnish state indemnity, particularly owing to the clause which states that the agreed value is called into question in the event of damage.

Another reason for refusing Finnish indemnity is the ambiguity in the act and decree as regards coverage. Of course, detailed guidelines are available, but only in Finnish.

Following this survey, the Ministry of Education gave its approval for the document to be translated.

Experience as a lender

The museum professionals were favourably inclined towards foreign state indemnities and were aware of the existence of the English, American, French, Norwegian and Swedish indemnity schemes.

Experience as a borrower

Finnish state indemnity is generally accepted by lenders, with the exception of lenders from France.

Recommendations

Deadlines should be shorter and the procedures simpler.

All works of art should be covered by the scheme, without any restrictions on the materials used. In contemporary art, the "concept" of a work of art should be able to be covered by the state indemnity scheme.

Recent developments

Forms and guidelines have been available on the internet since 2001.

FRANCE

This report has been endorsed by Bénédicte Boissonnas, Exhibition Department Head, Réunion des Musées Nationaux.

There is a state indemnity scheme in force in France.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>Selected national museums</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		○
Cost of indemnity		×
Waiver of subrogation		×

I Introduction

Organisation of museums

There are 34 national museums in France which have gained more and more management autonomy, particularly with respect to their finances, by becoming administrative public corporations: the Georges Pompidou National Centre for Art and Culture since 1976, the Louvre since 1992, the Museum of the Chateau of Versailles since 1995 and the Museum of Orsay and Guimet National Museum of Asiatic Art since January 2004.

The Act of 4 January 2002 gave a specific status to the *Musées de France*, museums meeting certain scientific and cultural criteria. This designation has since become clearly identifiable by the public.

Introduction of scheme

The French state indemnity scheme was created in 1993 so that exhibitions requiring large sums of money could be held. It was used for the first time in 1993-1994, for the *Masterpieces of the Barnes Foundation* exhibition held at the Museum of Orsay.

Regulations

Act No. 93-20 of 7 January 1993 on instituting state indemnity for some exhibitions was amended by Implementing Decree No. 93-947 of 23 July 1993.

II State indemnity coverage

Works covered

Works belonging to foreign public and private collections are covered.

Works belonging to France's national collections and deposits are not covered.

Scope

Works are covered from nail to nail, during transportation to and from the exhibition venue and while the works remain with the borrower.

Risks not covered

A distinguishing feature of the French system is that it brings private insurance and state indemnity together under a single insurance policy.

The chosen insurance policy therefore determines what risks will be excluded. In general, they are:

Previous damage to a work of art, the risk of radioactivity and the risk of *in situ* terrorism. In France, the coverage of the risk of terrorism during transportation and *in situ* is obligatory.

III Eligibility criteria

Beneficiaries

State indemnity was set up in France exclusively for national public institutions organising exhibitions. To date, the Réunion des Musées Nationaux and the Georges Pompidou National Centre for Art and Culture have been the only beneficiaries.

Selection criteria

State indemnity is not granted unconditionally; each project is submitted to the Ministry for the Budget, which only awards indemnity in exceptional cases after verifying that the exhibition venue does indeed guarantee the required security and that it is prepared with the collaboration of the competent scientific and technical personnel.

Minimum and maximum limits

The total insured value of works not belonging to the State must be at least 46 million euro. However, in practice, the total value of the exhibition should not be less than 250 million euro

for state indemnity to be a viable option.

No maximum limit has been set.

IV The way the system works

Institution

The Ministry for the Budget issues an order by means of which it awards state indemnity, on the advice of the State Indemnity Approval Committee, which is appointed by the Ministry of Culture and the Ministry for the Budget.

The Approval Committee is composed of state representatives and individuals who are qualified in cultural and insurance matters.

Application procedures and contents

The institution requesting indemnity and the Direction des Musées de France submit their applications to the State Indemnity Approval Committee. The Direction des Musées de France is a department in the Ministry of Culture that supervises the country's museums.

An application should include:

- a summary of the application
- a description of the project
- a list of the works to be exhibited and their agreed values
- a budget estimate
- a report from the different insurance brokers consulted (required by the committee)
- a description of the transportation of the works
- the security conditions and plans of the exhibition halls

Evaluation mechanisms for works covered

The works are insured according to their agreed value, in the lender's currency.

Required security conditions

The chairman of the Approval Committee may assign a group of technical experts the task of establishing the security measures taken in exhibition venues and the conditions under which the transportation and escorting of the works for which indemnity is requested are carried out.

The institutions requesting state indemnity are required to pay the experts' fees.

Deductible/Minimum liability limit

The State covers that part of the damages exceeding an amount which is determined on a case by case basis by the Approval Committee. This amount varies depending on the maximum value of the exhibition and on the insured value of the most expensive work of art in the exhibition, the minimum limit at present being set by law at 46 million euro.

For damages incurred below the deductible, cover must be taken out with a specialist insurance company; the State is only liable for amounts exceeding the deductible value.

Maximum amount covered by the indemnity

No maximum amount has been determined.

Cost of state indemnity

The organiser benefiting from the state indemnity pays a fixed fee of €30,500 to the Treasury for each project (in addition to the premium paid to the insurance broker).

State guarantee certificates

The lender receives an insurance certificate specifying the date on which state indemnity coverage commences and the amount beyond which the State is financially liable in the event of damage.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the public institution organising the exhibition must inform the owner of the work and its broker within 48 hours. In the event that the damage exceeds the deductible and brings into play the state indemnity, the organiser must then also notify the Ministry of Culture and the Ministry for the Budget.

Waiver of subrogation

There is a waiver of subrogation clause.

Compensation in the event of damage

For damage exceeding the deductible, the state indemnity scheme covers the restoration costs of the damaged works. Restoration work is carried out by a restorer chosen by the owner or with the owner's consent and following the approval of an expert appointed by the Ministry of Culture.

The indemnity also covers the depreciation of the work after it has been restored.

If the damaged work belongs to a series or a set of art works, the state indemnity will cover the depreciation of the series or set.

Recovery of a work of art following compensation

Should a lost work be found after the lender has been compensated, it is restored to the lender and the latter returns the compensation received, less restoration and depreciation costs.

Institution responsible for compensation

The Ministry of Finance makes provision for compensation in the "reserves" item in the overall budget.

Beneficiary of compensation

For amounts exceeding the deductible, the Ministry of Finance pays the compensation directly to the lender.

VI Competent court and applicable law

The competent court is the administrative court of Paris and the applicable law is French law.

VII Experience and recommendations

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition in €	Maximum sum insured for an exhibition in €	Overall amount insured for the year in €
2001	0					
2002	2	2	0	415,914,236	609,454,094	1,025,368,420
2003	5	5	0	280,000,000	1,924,647,391	4,529,732,105

Experience as a lender

In 2003, the Loan Committee of the Direction des Musées de France, which is responsible for loaning the works of France's national museums, accepted state indemnity from Sweden for the exhibition titled *Terres Cuites Néo-classiques en Europe*. This committee refused Finnish state indemnity for the *Les Maîtres Français: Chefs d'œuvre* exhibition held at the Ateneum Art Museum in 2004 and Polish state indemnity for the exhibition on French expressionism, which was held at the National Museum of Warsaw, because the scope of the coverage provided was not clearly identifiable.

The Direction des Musées de France is favourably inclined towards state indemnities, but the texts have to be much clearer and must be written in French. Furthermore, every act must be accompanied by an implementing decree.

It is also the policy of Georges Pompidou National Centre for Art and Culture to accept European state indemnity; in particular, it recently accepted British state indemnity for the loan of a work by Kirchner to the Victoria & Albert Museum.

Experience as a borrower

The Constable exhibition organised by the British Council and presented at the Galeries Nationales du Grand Palais was covered by the British state indemnity scheme.

The Montreal Museum of Fine Arts and the National Gallery in Washington refused French indemnity for *The Surrealist Revolution* exhibition held at the Georges Pompidou National Centre for Art and Culture in 2002.

Recommendations

If the French indemnity system were to be reformed, it would be desirable to abolish the fixed fee payable to the Treasury and to lower the minimum limit or for state indemnity to be applicable from the very first euro of damage suffered.

For example, the contemporary art exhibitions held at the Georges Pompidou National Centre for Art and Culture, whose insurance value is quite low, cannot be covered by the state indemnity scheme because of the minimum limit set.

Recent developments

French state indemnity was recently awarded for the exhibition of the Winthrop Collection at the Musée des Beaux-Arts in Lyons and the Rubens exhibition at the Palais des Beaux- Arts in Lille; these projects were co-produced with the RMN, a national public corporation, and were thus eligible for state indemnity.

GREECE

This report has been endorsed by Georgios Liontos, Director of European Affairs, Hellenic Ministry of Culture.

There is no state indemnity scheme in force in Greece.

I Organisation of museums

98% of Greece's museums are government-owned and 2% are private. There are 180 national museums which are subject to the authority of the Ministry of Culture as well as foundations, such as the Benaki Museum or the N. P. Goulandris Foundation, which are subsidised by the government.

II Ongoing discussions

At present, there is no state indemnity system in force in Greece. However, the Hellenic Ministry of Culture would not be opposed to the creation of a system that would combine coverage from insurance companies and the State. A committee composed of museum directors should soon be submitting its proposals to the Ministry of Culture.

III Insurance

Insurance costs have increased by 20% on average since 11 September 2001.

The museum professionals contacted have the following points of view:

The National Gallery turned to European insurance companies in order to insure the exhibition *In the Light of Apollo, Italian Renaissance and Greece*; an Italian insurance broker was eventually chosen. The same method was followed for *Six Leading Sculptors: Rodin, Bourdelle, Maillol, Brancusi, Giacometti, Moore*, which opened its doors to the public in June 2004 as part of the Cultural Olympiad.

Exhibitions of Greek works abroad are made possible thanks to the support of Greek private foundations. For example, thanks to the Niarchos Foundation, the National Gallery organises exhibitions in partnership with foreign museums in order to promote Greek art. Such exhibitions include *Du Greco à Delacroix*, held at the Hermitage Foundation in Lausanne.

The temporary exhibitions at the Benaki Museum are essentially made up of works on loan; insurance costs are thus an important consideration. They represent an average of 20% of the exhibition budget for international loans and can even reach 40%, as is the case with the coming exhibition of icons from the Monastery of Sinai.

The future National Museum of Contemporary Art, which is already organising exhibitions at the Athens Concert Hall, limits its insurance costs thanks to the patronage of insurance companies, as is the case with the Chen Zen exhibition.

IV Experience as a lender

The National Gallery has just accepted American and British state indemnity for two works by El Greco that were loaned for an exhibition organised by the Metropolitan Museum of Art of New York and the National Gallery of London.

The Benaki Museum accepts foreign state indemnity. It accepted indemnity from the United States for loans currently on show at the Metropolitan Museum of Art for the exhibition titled *Byzantium: Faith and Power*. The coverage provided by the state indemnity was complemented by a private insurance policy, which covered the risk of *in situ* terrorism.

V Recommendations

The museum professionals contacted willingly accept foreign state indemnity and hope that in the event of damage, compensation will be paid much more quickly than in the case of private insurance companies.

They suggest that the maximum insurable limits set by foreign indemnity schemes be increased since they are quickly reached and, consequently, some loans have to be covered by private insurance companies, as was the case with the loans of the Benaki Museum during the *El Greco* exhibition organised by the Thyssen-Bornemisza Museum.

The risk of terrorism should also be covered by state indemnity schemes, because it is an increasingly costly risk to cover with private insurance companies.

The professionals who were contacted are in favour of the creation of a state indemnity scheme in Greece, as this would enable them to reduce insurance costs.

The state indemnity scheme likely set up in the future in Greece should ideally also cover the works from foreign museums that are deposited at Greek museums. The Benaki Museum is currently in the middle of negotiations with the Antikensammlung, Staatliche Museen zu Berlin, for a six-year loan of a work of art. The Benaki Museum already has 22 permanent deposits from the Archaeological Museum in Cyprus.

HUNGARY

This report has been endorsed by Henrietta Galambos, Szepmuvezeti Museum (Budapest).

There is a state indemnity system in force in Hungary (which does not only concern works of art).

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
Minimum/maximum limit per project		○
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		○
Maximum amount		○
Cost of indemnity		○
Waiver of subrogation		Y

I Introduction

Organisation of museums

In 2000, there were 832 museums in Hungary.

Regulations

Two acts and a government decree deal with state indemnity in general, and do not focus on works of art:

- Public Finance Act No. XXXVIII of 1992 (Articles 33 and 42). This act stipulates that on behalf of the government, the Minister of Finance shall sign an agreement on the amount of compensation for which liability can be assumed. This amount is calculated in a way that prevents the creation of liabilities in the general budget.
- The annual Budget Act of the Republic of Hungary. This act specifies the total indemnity that can be undertaken by the Hungarian government. In 2003 and 2004, this amount could not exceed 2.5% of the expenses on the general budget.

- Implementing Decree No. 151 (X.1.) of 1996, which determines the details pertaining to the compensation procedure for all types of state indemnity. This decree was mainly foreseen so as to provide a guarantee for loans obtained. No specific provision is made for art exhibitions, which is a problem when attempting to apply the legislation to this particular case.

II State indemnity coverage

Works covered

Works borrowed from abroad for temporary exhibitions can be covered.

Scope

Works are covered from nail to nail.

Risks not covered

Defects that are inherent in the works cannot be covered. The risk of war is covered at the exhibition venue, but not during transportation across a war zone.

III Eligibility criteria

Beneficiaries

The current legislation enables all the museums and institutions to apply for state indemnity. The government is free to award or refuse indemnity.

Selection criteria

The institution organising the exhibition submits its application to the Ministry of Cultural Heritage, which then forwards this application – together with its recommendation – to the Ministry of Finance. The government makes a decision based on the proposals made by the two competent ministers. Each time that state indemnity is awarded, a government resolution authorises the Minister of Finance – who represents the Hungarian government – to co-sign the state indemnity agreement with the borrower.

Minimum and maximum limits

No minimum or maximum limit has been set.

IV The way the system works

Institution

The museums must apply to the Ministry of Cultural Heritage.

Application procedures and contents

The borrowing institution must submit an application containing a list of the works and their insured values, the names of the lenders and the exhibition dates.

In the event that the government decides to grant state indemnity, an indemnity agreement and guarantee certificate are issued if need be:

The indemnity agreement includes the title of the exhibition, the required duration, the amount of compensation and the extent of the cover. It is concluded between the Ministry of Finance and the director of the borrowing institution, and is signed by both parties.

Moreover, a statement of acceptance must be signed by the lender. By signing the statement, the lender declares that it understands and accepts the conditions of the Hungarian state indemnity scheme. Without this statement, the state indemnity cannot come into effect.

Evaluation mechanisms for works covered

The lender specifies the value in the loan form received from the museum.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the lender and borrower come to an agreement on the work's restoration, whose cost cannot exceed the value of the work.

The lender and borrower agree on the amount of depreciation following restoration. Both parties then decide together on the cost of restoration and to what extent it can be reduced. If they cannot reach an agreement, each party can then choose an expert to make the assessment.

If the two experts disagree, they then appoint an arbitrator. Should they not be able to agree on the name of an arbitrator, the competent Hungarian court then appoints an expert.

In the event of loss or destruction, the borrower is required to pay the lender compensation up to the total insurance value declared in the loan agreement.

Recovery of works after compensation

If the work is recovered after having been declared lost, the lender is entitled to retrieve the work in return for the compensation that had been received.

VI Experience and recommendations

The professionals contacted estimate that, on average, 10% of the cost of an exhibition can be saved if the exhibition is covered by a state indemnity scheme.

Problems and limitations of the system

The main problem is the absence of appropriate legislation. As a result of this, the system in force is not easy to understand and, furthermore, lenders are reluctant to accept Hungarian state indemnity.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001	0	0	0	0	0	0
2002	2	2	0	HUF 3,158,000,000 (€12,814,065)	HUF 15,380,540,508 (€62,408,879)	HUF 18,538,540,508 (€75,222,944)
2003	2	2	0	HUF 4,515,000,000 (€18,320,298)	HUF 24,500,000,000 (€99,412,471)	HUF 29,015,000,000 (€117,732,770)

Recommendations

The following points were made during the interview:

- The creation of a European indemnity system. New Zealand's indemnity system was cited many times as an example.
- It would be desirable for Hungary to adopt a decree on immunity from seizure in order to meet the requirements of many museums lending works.

IRELAND

This report has been endorsed Peadar Caffrey, Ministry of Culture, Department of Arts, Sport and Tourism.

There is a state indemnity system in force in Ireland.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
Risks excluded		×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>Selected national museums</i>	×
	<i>Other museums financed with public funds</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		○
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		Y

I Introduction

Organisation of museums

Ireland has the following national institutions, which are governed by the State:

- the National Museum of Ireland, with its four branches (Museum of Archaeology and History, Museum of Natural History, Museum of Decorative Arts, Museum of Country Life);
- the Chester Beatty Library
- the National Gallery of Ireland
- the Irish Museum of Modern Art.

Moreover, there are another 246 museums which are under the administration of 26 different counties.

Introduction of scheme

Even though state indemnity was only brought into force in 1997 by the National Cultural Institutions Act, it has been granted since the 1930s. Before 1997, a contract was entered into between the lending institution, the borrowing institution and the Ministry of Culture. This system became too complicated and was thus replaced by the above act. At the same time, a standard contract was drawn up, stipulating the details regarding the award of state indemnity. Ever since the act was passed, this contract has been used every time state indemnity has been granted.

Regulations

State indemnity is regulated by the National Cultural Institutions Act.

II State indemnity coverage

Works covered

Indemnity is provided for incoming loans from abroad and is available to the institutions/organisations listed below (point III), which are responsible for organising public exhibitions. Works belonging to national collections cannot be covered.

Scope

Works are covered from nail to nail.

Risks not covered

Apart from acts of negligence on the part of the borrower, all other risks are covered, including acts of war, hostilities or terrorist acts, which are expressly mentioned.

III Eligibility criteria

Beneficiaries

Only certain selected institutions can request state indemnity. These are either national institutions or independent institutions that are financed entirely by the central government:

- National Museum of Ireland
- National Library of Ireland
- National Gallery of Ireland
- Chester Beatty Library
- Crawford Municipal Art Gallery

- Irish Museum of Modern Art Company
- Hugh Lane Gallery of Modern Art
- Royal Irish Academy
- Hunt Museum, Limerick.

Selection criteria

According to Article 43(1) of the National Cultural Institutions Act, state indemnity is granted if the public exhibition of the object in question will contribute materially to public understanding or appreciation of art and culture.

Minimum limit

The work or works for which indemnity is requested must have a minimum value of €1,270,000.

IV The way the system works

Institution

The borrowing institution submits its application to the Cultural Institutions Unit of the Department of Arts, Sport and Tourism.

Application procedures and contents

Required information/documents:

- Name and address of lender
- Date of transportation from lending institution
- Expected date of arrival at the borrowing institution
- Exhibition title
- List of works with a precise description of each, namely the name of the work, the name of the artist and dimensions of the work
- Value of the work in euro
- Exhibition opening date
- Exhibition closing date
- Date of transportation from Ireland

A "guarantee certificate" is signed by a senior officer of the Department of Arts, Sport and Tourism by order of the Minister for Arts, Sport and Tourism. The document is also signed by a representative of the institution that applied for indemnity.

Evaluation mechanisms for works covered

In general, the value declared by the lender is accepted.

Required security conditions

Seeing that all candidates are under the financial responsibility of the Department of Arts, Sport and Tourism and that the Department is also in charge of insuring the buildings, no special security measures need to be taken. Security matters are subject to the agreement of the lender and borrower.

Deductible/Liability

The state indemnity scheme covers the entire amount; there is not deductible or limit.

Maximum amount covered by the indemnity

The amount of compensation is determined by the Ministry of Culture. The law stipulates that the maximum cover at a given moment in time cannot exceed 190 million euro. Nevertheless, the Act (Article 44.3) states that it is possible to vary this amount by order of the Minister for Culture and with the consent of the Minister for Finance.

Cost of state indemnity

None.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

No specific provisions have been made.

Waiver of subrogation

There is no waiver of subrogation clause.

Coverage in the event of

- damage

The lender is indemnified up to an amount deemed reasonable and agreed upon by the lender and the Ministry. Failing agreement, the dispute is settled by an arbitrator appointed by common agreement between the lender and the Ministry or, failing that, by the acting chairman of the Law Society of Ireland. Moreover, the lender also receives a sum that corresponds to the depreciation of the object after restoration.

- loss

The lender's compensation is equal to the agreed value of the work.

Recovery of a work of art following compensation

In the event that a work of art is recovered, it is returned to the lender on the condition that he will return the compensation received, less the estimated cost of restoration and depreciation.

VI Competent court and applicable law

Only Irish law is applicable and the competent court is that of Dublin.

VII Experience and recommendations

Problems and limitations of the system

According to the National Museum, the minimum limit of €1,270,000 is much too high. In addition, it would be desirable for the loans of national museums to be covered too.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001	5	5	0	€4,571,000	€50,016,639	€68,833,621
2002	3	3	0	€3,436,067	€4,571,000	€8,007,067
2003	4	4	0	€3,378,367	€80,252,546	€161,595,146

No complaint of damage has ever been made.

Experience as a lender

The state indemnities of Germany, France and England were accepted, as was that of the United States, which proved to be very complicated. The British state indemnity scheme seems to be the most complete and the easiest to use.

Experience as a borrower

According to the National Gallery, 85% of the requests for state indemnity were accepted. If the lender refuses state indemnity for any reason whatsoever, it is requested to contact Blackwall Green – the National gallery's insurance company for many years. In the rare cases

where the lender also refuses this second proposal, the National Gallery undertakes to pay the lender's insurance costs.

Recommendations

A European indemnity scheme would be a good way to facilitate the international exchange of works, particularly with the new EU Member States. It would also be necessary to ensure that the exhibition venues meet international security standards and measures. In this perspective, it would be useful to prepare a list of potential candidates meeting these criteria. At the same time, guidelines could also be introduced in order to help the institutions which do not as yet comply with the required criteria.

ICELAND

This report has been endorsed by Thorgeir Olafsson, Head of Division of Arts and Museums, Ministry of Education, Science and Culture, and Harpa Thorsdottir, Head of Exhibitions at the National Gallery of Iceland.

There is no state indemnity scheme in force in Iceland.

I Organisation of museums

The three major national museums, situated in Reykjavik, are the National Gallery, the National Museum and the Museum of Natural History, which are subject to the authority of the Ministry of Culture and Education and enjoy autonomy in the management of their finances.

There are many municipal museums in Iceland, such as the Gerdarsafn (Kopavogur Art Museum), the Hafnarborg (Hafnarfjordur Museum), the Listasafn Reykjanesbæjar (Reykjanesbaer Art Museum) and the Reykjavik Art Museum, which has three exhibition venues: the Hafnarhus, the Asmundarsafn and the Kjarvalsstadir.

The new legislation on museums, instituted in 2002, establishes the National Gallery, the National Museum and the Museum of Natural History as leaders in their respective fields.

A new body, the museums council, has just been created, which has an advisory role and manages government subsidies.

II Ongoing discussions

At the request of the museums, the Ministry of Culture and Education and the Ministry of Finance discussed the possibility of establishing state indemnity legislation that would be similar to that of other Scandinavian countries.

In the opinion of the Ministry of Finance, the state budget is unable to support the impact that the introduction of such a system would possibly have on public funds. The Ministry of Finance is discussing the possibility of providing museums with access to special aid in order for them to be able to meet insurance costs.

However, the State did agree to cover the possible losses for some exhibitions that were held in Iceland. That is how the Picasso exhibition organised by the Reykjavik Art Museum (Kjarvalsstadir) in 1986 was able to present the works belonging to Jacqueline Picasso, for which, unusually, the Icelandic State assumed responsibility.

Icelandic museums bear the insurance costs when exhibiting works from their national collections in exhibitions abroad. This was the case with the exhibition titled *Confronting Nature, Icelandic Art of the 20th Century*, held at the Corcoran Gallery of Art in Washington in 2001 and at the Tretyakov Gallery in Moscow in 2002.

III Insurance costs

Insurance costs make up 5% to 15% of the budget for exhibitions that are held at the National Gallery; the works are insured with Kuhn & Bulow or Blackwall Green.

IV Experience

Experience as a lender

Of all the museums contacted, only the Reykjavik Art Museum has already accepted state indemnity as a lender.

Experience as a borrower

In 1992, the National Gallery held an exhibition titled *The Golden Ages*, which was insured by the Finnish indemnity scheme.

The National Gallery has obtained a work by the Icelandic artist Jon Stefansson as a deposit from the Royal British Collection; the work is not covered *in situ*, which is precisely the case with the museum's collections.

V Recommendations

A state indemnity system spanning all the countries in the European Union or European Economic Area would lead to a reduction in costs and facilitate the circulation of art works.

Other methods could also be adopted to reduce exhibition costs:

- more reasonable insurance values
- escorts could only be used when strictly necessary and not systematically every time a work is moved to another venue
- loan fees (administrative costs related to the loans) should not be generalised.

ITALY

This report has been endorsed by Maria Grazia Benini.

(General Department of the Ministry of Cultural Goods and Activities)

There is a state indemnity scheme in force in Italy.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>Outgoing loans</i>	×
	<i>National collections excluded</i>	○
Scope	<i>Nail to nail</i>	×
	<i>Certain intervals excluded</i>	×
Risks excluded		○
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
	<i>Private museums</i>	×
Minimum/maximum limit per project		○
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		○
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

Organisation of museums

Italy has 101 national museums, which are answerable to the Ministry of Cultural Goods, and approximately 900 diocesan, community or provincial museums.

In the last two years, Florence's twelve national museums have enjoyed financial autonomy and have delegated the organisation of exhibitions to agents.

Introduction of scheme

The first state indemnity scheme was in force between 1997 and 1999.

A new indemnity scheme is at present being prepared.

The information in this report is only indicative since a decree specifying the system's implementation criteria and methods is expected to be issued.

Regulations

The new state indemnity scheme is covered in Articles 48 and 49 of the Official Gazette supplement dated 24 February 2004 (see annex).

The Ministry of Cultural Goods is in the process of preparing an implementing decree.

II State indemnity coverage

Works covered

All goods, whether borrowed or lent, can be covered; however, particular attention will be paid to the works of private collectors: restorers will have to issue a report on the condition of these works just before they are removed. Deposits are not covered.

Scope

Works will be covered from nail to nail, with the possibility that part of or the entire transportation will be excluded if the risks are considered to be too high.

Risks not covered

Acts of war and the risk of terrorism were excluded in the previous indemnity scheme, but will probably be included in the new regulations.

III Eligibility criteria

Beneficiaries

All the national museums and private organisers that meet the security standards specified by the Ministry of Cultural Goods, as well as private organisers that mount exhibitions in venues governed by the State, are eligible for state indemnity.

Selection criteria

Exhibitions should be scientific in nature and should bring together works of high artistic value.

Minimum and maximum limits

No minimum or maximum limit will be set.

IV The way the system works

Institution

The loan committee of the Ministry of Cultural Goods will be responsible for administering the Italian indemnity scheme.

Application procedures and contents

Applications should be submitted at least 6 months before the commencement of indemnity coverage and should contain:

- a technical and scientific plan
- a description of the scientific and organising committee
- a list of the works and their insured values
- reports on the condition of the works
- the budget estimate
- a report from an insurance broker consulted, in which the economies achieved from state indemnity coverage are mentioned
- a description of the packing and transportation of the works
- a Facilities Report (security conditions related to the exhibition of art works)
- and, depending on the nature of the works, the approval of the relevant departments of the Ministry of Cultural Goods

Evaluation mechanisms for works covered

The works are insured according to their agreed values, which are approved by the lender, the borrower and the Ministry of Cultural Goods.

Required security conditions

The security conditions are determined by the Ministry of Cultural Goods.

Deductible

No deductible is expected to be set. The Italian indemnity scheme will cover the works entirely.

Maximum amount covered by the indemnity

Italian indemnity will be able to cover a maximum risk of 300 million euro at a given point in time.

Cost of state indemnity

The indemnity will be provided free of charge to beneficiaries.

State guarantee certificates

The Ministry of Cultural Goods will issue the guarantee certificates.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the museum will have to notify the lender and Ministry of Cultural Goods without delay. The Ministry will be responsible for establishing the nature of the damage and determining the compensation required for restoration and depreciation.

Waiver of subrogation

The Ministry of Cultural Goods will be able to take action against the organisers or third parties, with the exception of employees of the Ministry of Cultural Goods and transport companies, because this would conflict with the Italian Civil Code.

Compensation in the event of damage

In the event of damage, restoration and depreciation costs will be estimated by the Ministry of Cultural Goods in consultation with the lender and borrower, the maximum cost being 50% of the agreed value. If the parties are unable to come to an agreement, an expert will be called in.

Compensation in the event of loss

In the event of total loss of a work, the compensation will correspond to the agreed value.

Recovery of a work of art following compensation

As a rule, in the event that a work is recovered after the lender has been compensated for total loss, the latter will then retrieve its work and will have to return the compensation received, less the estimated costs of restoration and depreciation.

Institution responsible for compensation

The amount of 300 million euro is listed in the compulsory expenditure of the Treasury Ministry.

Beneficiary of compensation

Compensation will be paid to the borrower, which will forward it to the lender.

VI Competent jurisdiction in the event of a legal dispute

Italian law is applicable and the Italian court(s) have jurisdiction in such matters.

VII Experience and recommendations

Problems and limitations of the system

In the two years of its existence, from 1997 to 1999, the Italian indemnity scheme was employed for 10 exhibitions.

Statistics.

There was no indemnity scheme in force in Italy between 2001 and 2003.

Experience as a lender

Some Italian museums have contracts with insurance companies and are thus obliged to make use of this insurance when lending works abroad. In these cases, they refuse foreign state indemnities.

Experience as a borrower

Contracts with insurance companies enable borrowers to benefit for lower premiums. The insurance company may occasionally sponsor some exhibitions itself, in which case the museum does not have to pay any premium.

Recommendations

A "European model of state indemnity" and reciprocity agreements between countries regarding the acceptance of state indemnities would be desirable.

Recent developments

The state indemnity scheme in force between 1997 and 1999 could be used for works

borrowed from and loaned to other countries. The new scheme will be able to be used for incoming loans and possibly for exhibitions held abroad by Italian institutions.

LATVIA

This report has been endorsed by Anita Jirgensone, State Authority on Museums at the Ministry of Culture.

There is no state indemnity scheme in force in Latvia.

I Organisation of museums

Latvia has 36 state museums and 94 municipal museums. It is not known how many private museums there are.

II Ongoing discussions

The Ministry of Culture began discussions with a view to establishing a state indemnity system that would be based on Article 19 of the Museums Act, which stipulates that "museums should obtain state indemnity insurance in order to organise international exhibitions in Latvia". In the absence of an implementing decree, this act is a dead letter. For this reason, the Ministry of Culture attempted, in 1998, to develop the regulations required to implement the act. After requesting information from Sweden, Finland, Norway, Poland and the Czech Republic, the Ministry prepared a draft order in 2000. This draft order was submitted to the Cabinet – as required by Latvian legislation – since it is up to the government to ratify the order after having obtained the approval of the various ministries. The Ministry of Finance and the Ministry of Justice are opposed to this draft order. The former remarked that no allocation has been made in the budget for these funds, nor were they specified in the Finance Act. The latter emphasised that the legal basis on which this draft order was based was inadequate. The Museums Act essentially specifies neither the selection procedure to be followed nor the possible beneficiaries of indemnity. In the opinion of the Ministry of Justice, the Museums Act should, first of all, be changed. As a result. The draft order was rejected.

III Insurance costs

Insurance costs amount to one thousandth of the value of the works. Cover is taken out with commercial insurance companies only for international exhibitions, while permanent exhibitions and museum collections are not insured.

When Latvian museums lend exhibitions or works to each other, a contract is entered into on the value of the works, but no insurance policy is taken out.

Museums have to cover their current expenses from the subsidies obtained from the State and from their own receipts, but the latter amount is deducted from the state subsidy.

The Cultural Capital Foundation was created by the State five years ago, with an annual endowment of 5 million lats. Museums could request financial aid for projects such as exhibitions, publications or the acquisition of new works. Last year, the History Museum

received 60,000 lats from this fund, which corresponds to 20% of its annual budget. Also, the National Museum received 62,000 lats for a total budget of 300,000 lats.

VI Existing security levels

For the time being, no museum in Latvia meets international standards. However, a great effort is currently being made, particularly by the Museum of Foreign Art. The foundations for the international exchange of art works are thus being laid little by little.

V Examples of exhibitions cancelled owing to insurance premiums

The Museum of Foreign Art had to give up its plan to borrow a painting by Caspar David Friedrich from Regensburg and the National Museum had to cancel an exhibition on the French impressionists owing to the high insurance premiums.

VI Experience

Experience as a lender

The national museums in Latvia have to obtain permission from the State before lending their works. Permission is only given if there is proof that insurance cover has been obtained. The state indemnity certificate constitutes sufficient evidence of this. Experience was gained of Finnish state indemnity in 1993 and of Irish indemnity in 2004 for the *New Frontiers* exhibition held at the National Gallery in Dublin.

Experience as a borrower

According to the information provided by the museums, the usual way of bringing foreign works or exhibitions to Latvia is to have the lender bear the insurance costs. The lender might be a Ministry of Foreign Affairs, an embassy or a private foundation. It is very rare for the borrowing institution to pay the insurance fees itself. The National Museum in Riga once insured an exhibition from Estonia, as did the History Museum of Latvia, which was the only time the latter ever did insure an exhibition; the Museum of Foreign Art only once assumed the insurance costs for an exhibition, which was from Russia. The exchange of art works with partners with limited financial means, for example Bulgaria and Romania, nevertheless works quite well.

VII Recommendations

According to the museums, state indemnity would be effective in facilitating exchanges and would significantly simplify the procedures involved in the loaning of works of art.

LIECHTENSTEIN

This report has been endorsed by Roswitha Meier, Kunstmuseum Liechtenstein.

There is no state indemnity system in force in Liechtenstein.

I Organisation of museums

In Liechtenstein, the two largest museums are state funded and are established as foundations governed by public law: the Kunstmuseum Liechtenstein (former Liechtensteinische Staatliche Kunstsammlung) and the Liechtensteinisches Landesmuseum. All the other museums are financed by the municipalities.

II Insurance costs

Insurance costs are extremely high. Since the collections belonging to the country's museums are not extremely significant, the problem does not so much lie in insuring these objects but rather in insuring works borrowed from abroad. Nevertheless, a state indemnity scheme would not really enable museums to organise more exhibitions, as insurance costs are just one aspect among many requiring consideration in the exhibition budget. The budget of museums is much too limited for major exhibitions. Moreover, it is difficult to find patrons in Liechtenstein.

III Existing security levels

The two state museums were recently renovated; their equipment is consequently of a high standard.

IV Examples of exhibitions cancelled owing to insurance premiums

No exhibition is known to have been cancelled solely because of the insurance premiums. As mentioned in point II, museum budgets are much too limited for major exhibitions to be organised.

V Experience

Experience as a lender

No foreign state indemnity has been accepted to date because the occasion has never arisen.

Experience as a borrower

In general, works borrowed from abroad are insured by private insurance companies. Either the lenders use their own insurance policies or cover is taken out for the duration of the exhibition.

VI Cases of damage

There have been no reported cases of an object being stolen or lost during an exhibition.

LITHUANIA

This report has been endorsed by Rolandas Kvietkauskas, Under-Secretary of State of the Ministry of Culture.

There is a state indemnity system in force in Lithuania.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	○
	<i>Certain intervals excluded</i>	○
Risks excluded		○
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		Y

I Introduction

Organisation of museums

Lithuania has 3 museums which are administered by the State: the National Museum of Lithuania, the Lithuanian Art Museum and the M.K. Ciurlionis National Art Museum. Moreover, there are 16 supraregional museums, 61 museums that are administered by local communities, 2 cantonal and/or district museums, 28 which are under the administration of public institutions and 23 private museums.

Introduction of scheme

A state indemnity scheme was set up in 2003 following the initiative taken by the Lithuanian museums and thanks to the substantial support provided by the Ministries of Finance and Culture. This was brought about as a result of the increasing frequency with which foreign

lenders demanded state indemnity for valuable works.

Regulations

Three legal texts focus on Lithuania's state indemnity scheme:

- Article 2 of the Protection of Cultural Heritage Act provides a legal basis for the government's decision to award state indemnity.
- A resolution by the government of the Republic of Lithuania describes the procedure to be followed.
- A decree, issued by the Minister of Culture of the Republic of Lithuania, approving the formation of a committee of experts responsible for studying the requests for government indemnity and the application forms submitted for this purpose.

II State indemnity coverage

Works covered

Works of cultural value that are temporarily found in the Republic of Lithuania.

Scope

Works of art are covered by the scheme from the moment of entry in the Republic of Lithuania up until their departure (when they cross the country's border).

Risks not covered

No risk is excluded. The state indemnity scheme pays damages in the event of damage, destruction or loss.

III Eligibility criteria

Beneficiaries

National and public cultural institutions and archives belonging to the Republic of Lithuania which are financed by state budget funds.

Selection criteria

No regulatory provision has been made which specifies the circumstances in which state indemnity can be requested for an object or project.

Minimum and maximum limits

State indemnity can only be awarded for exhibitions whose total value is between 1 million and 5 million Lithuanian litas (LTL).

IV The way the system works

Institutions

The request for indemnity has to be addressed to the Ministry of Culture. The committee of experts responsible for state indemnity applications is appointed for a period of three years and consists of seven to nine experts. It evaluates the applications submitted and presents its findings.

Application procedures and contents

Application forms must be submitted at the latest on 30 September of the year preceding the opening of the exhibition.

Applications must include:

- A list of the objects with the precise information found in the catalogue, the value of each object and the total value of the exhibition.
- A draft agreement between the borrowing institution and the lender, specifying the conditions of transportation, exhibition, protection, insurance and compensation for damages.
- A detailed description of the conditions of transportation, exhibition, security and the conditions set by the lender for showing the works.
- A statement by the borrowing institution, specifying that in the event of damage, destruction or loss of a loan, the institution will pay up to 1% of the value of the object as compensation out of its own funds.

The committee of experts presents its findings regarding the state indemnity applications to the Minister of Culture by 1 November at the latest. The Minister uses these findings to come to a decision about each application and then informs the applicant thereof within fifteen working days.

The borrowing institution must submit to the committee a copy of the agreement signed with the lender within one month of receiving notification of the decision.

Evaluation mechanisms for works covered

The value is usually determined by the lender. The borrowing institution verifies the declared value only when it believes it to be too high.

Required security conditions

During the period of indemnity cover, the committee of experts regularly examines the objects of value, the exhibition's technical aspects and the fire prevention and security systems in order to ensure that they comply with the agreement signed with the lenders. If these conditions are not satisfied, the committee proposes to the Minister of Culture that the objects should no longer be exhibited and the exhibition closed.

Deductible/Liability

In the event of damage, destruction or loss of a loan, the borrowing institution is responsible for paying the lender up to 1% of the value of the object out of its own funds.

Maximum amount covered by the indemnity

The indemnity scheme cannot cover more than 5 million LTL per year.

Cost of state indemnity

None.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, destruction or loss, the borrower should make the necessary arrangements to inform the Ministry of Culture of the measures taken. Moreover, the borrowing institution must provide the committee with a list of the damaged, destroyed or lost objects, specifying their total value so that the extent of the damage, destruction or loss can be determined along with the losses incurred.

Waiver of subrogation

No regulatory provision has been made on this issue.

Compensation in the event of

- damage

The damage is examined and the losses determined by the committee of experts together with a representative of the lending institution. The lender's compensation is based on the information contained in the committee's examination certificate.

- loss

The case is examined and the losses determined by the committee of experts together with a representative of the lending institution.

The lender's compensation is based on the information contained in the committee's examination certificate.

Recovery of works after compensation

No relevant regulatory provision has been made. The procedure described in the contract entered into between the borrower and the lender is applicable.

VI Competent court and applicable law

Lithuanian law is applicable.

VII Experience and recommendations

Problems and limitations of the system

A limitation of the new Lithuanian system is that it does not cover the works from nail to nail but only on Lithuanian territory.

The minimum limit of 1 million LTL is also relatively high. Moreover, the deadline set for applications is a problem for museums. Exhibitions that are to be held at the end of the year must, as a result, be planned well in advance.

Statistics

According to the information provided by the Ministry, only one application has been made since the scheme was set up. In the Ministry's opinion, this insignificant number is due to the lack of long-term planning on the part of museums. There has been no case of damage or loss in the last few years.

Experience as a lender

The Polish indemnity scheme has been a source of interesting experiences. The first time that the state indemnity of a Western European country was used, was for the New Frontiers exhibition held at the National Gallery in Dublin, where some paintings lent by Lithuania were covered by the Irish indemnity scheme.

Experience as a borrower

The Republic of Lithuania has had two experiences as a borrower: when the Secret Central Archives in Berlin lent a manuscript belonging to Lithuania's only king to a museum in Vilnius for a major exhibition celebrating the country's seven hundred and fiftieth anniversary, and when the tiara of Pope Pius XI was lent to Lithuania. The owners obtained a special guarantee from the State that their loans would be returned to them within the foreseen time limit. However, the loans were not insured by the state indemnity scheme.

Recommendations

The adoption of a European indemnity system would, in principle, be an ideal solution, but the Lithuanian authorities fear that the wide disparities in the budgetary laws of different countries will make this plan difficult to realise.

LUXEMBOURG

This report has been endorsed by Guy Frank, Minister of Culture.

There is no official state indemnity scheme in Luxembourg. However, in some rare cases, "letters of indemnity" are provided for exhibitions of particular importance.

I Organisation of museums

In Luxembourg, museums are funded by the state, as is the case with the National Museum of History and Art and the National Museum of Natural History, or by the municipalities, as is the case with the Museum of History in Luxembourg City.

II Ongoing discussions

The Parliament only issues letters of indemnity in very special cases. According to the Ministry of Finance, if the value of an exhibition requiring insurance were to exceed a certain upper limit (which has not been set), a bill would have to be passed. However, to date, there have been no discussions on the possible creation of a legally regulated indemnity system.

III Insurance costs

Insurance costs are extremely high owing to the great value of the works. It is impossible to estimate the average cost. Some lenders prefer to use their own insurance for the duration of the exhibition.

IV Existing security levels

The National Museum of History and Art, the Museum of Natural History, the Casino Luxembourg and the History Museum in Luxembourg City all comply with international standards.

V Examples of exhibitions cancelled owing to insurance premiums

Some exhibitions have had to be cancelled due to excessive insurance premiums.

VI Experience

Experience as a lender

Luxembourg has not had any experience with foreign state indemnity schemes.

Experience as a borrower

The works entrusted by foreign lenders are insured in the same way as the works belonging to Luxembourg's national museums. Some lenders prefer to use their own insurance for the duration of the loan period.

VII Cases of damage

None.

MALTA

This report has been endorsed by Anthony Pace, Superintendent of Cultural Heritage

According to the Superintendent of Cultural Heritage, Malta does have a state indemnity system, but since no document specifies its methods and procedures and given that it has never be used, it was decided that for the purposes of this study, Malta will be included among the countries without such a system for the moment.

I Introduction

Organisation of museums

In January 2003, two new organisations were established in order to manage Malta's thirty national museums and sites: the Superintendence of Cultural Heritage and Heritage Malta.

Introduction of scheme

In theory, a state indemnity scheme has been in force in Malta since the 1990s with the aim of insuring Maltese works exhibited abroad.

Regulations

There is no law or regulation that stipulates the state indemnity implementation procedures and methods applicable in Malta. The information contained in this report is therefore not confirmed by any document.

II State indemnity coverage

Works covered

Malta's indemnity scheme can only cover Maltese collections exhibited in other countries.

Scope

Works are covered from nail to nail.

Risks not covered

No risk is excluded.

III Eligibility criteria

Beneficiaries

All the national museums are eligible for state indemnity.

Selection criteria

Indemnity is intended for works belonging to Maltese collections exhibited abroad.

Minimum and maximum limits

No minimum or maximum limit has been set for the insurance value.

IV The way the system works

Institution

Heritage Malta is responsible for handling the applications for state indemnity.

Application procedures and contents

Museums must send their applications to Heritage Malta.

An application should include:

- a scientific presentation of the project
- the exhibition dates and period of state indemnity cover
- a list of the works to be exhibited and their insured values
- a description of the transportation of the works
- a Facilities Report (security conditions related to the exhibition of the works).

Evaluation mechanisms for works covered

A discussion is currently in progress in Malta on the evaluation procedures pertaining to works. For the time being, the works are insured according to the value agreed upon by the lender and borrower.

Required security conditions

The security conditions are determined by Heritage Malta and specified according to the nature of the works exhibited and the standards and requirements set by the Superintendent of Cultural Heritage, who authorises the works' departure from Maltese territory (cf. Cultural Heritage Act 2002, art. 41).

Deductible

No deductible has been set. The scheme provides 100% cover, also including the first losses.

Maximum amount covered by the indemnity

The Ministry of Finance has set no maximum limit for the year or for a given point in time.

Cost of state indemnity

Indemnity is provided free of charge to all museums.

State guarantee certificates

The guarantee certificate is a letter issued by the Ministry of Finance, specifying the extent of cover.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the museum must inform the lender, Heritage Malta, the Superintendence of Cultural Heritage and the Ministry of Finance without delay.

Waiver of subrogation

In the event of damage, Heritage Malta can take action against the organiser or third parties acting on its behalf.

Compensation in the event of

-damage

Should damage occur, the restoration and depreciation costs are estimated by Heritage Malta in consultation with the lender, the Superintendence of Cultural Heritage and the Ministry of Finance.

- loss

In the even of the total loss of a work, the compensation corresponds to the agreed value.

Recovery of a work of art following compensation

Should a work be found after the lender has been compensated for total loss, the latter regains its work of art and is required to pay back the amount received as compensation, less the estimated cost of restoration and depreciation.

Institution responsible for compensation

It is incumbent upon the Ministry of Finance to pay the compensation.

Beneficiary of compensation

Compensation is paid directly to the lender.

VI Competent court and applicable law

Malta has *a priori* jurisdiction in these matters.

VII Experience and recommendations

Problems and limitations of the system

Malta's state indemnity scheme has never been used.

Statistics

Maltese state indemnity has not been accepted to date.

Experience as a lender

In 2004, Malta's Museum of Fine Arts accepted Irish state indemnity for six works that were loaned for the *New Frontiers* exhibition held at the National Gallery in Dublin.

In order to promote their own collections, Maltese institutions organise exhibitions in other countries, for which they take out private insurance.

Two exhibitions have been planned for 2004: *Wonders from Prehistory* in Amsterdam and *Monaci in Armi* in Rome.

Experience as a borrower

Museums in Malta rarely borrow works because they organise their exhibitions around their own collections.

Private insurance cover was taken out for the items loaned from the Benaki Museum in Greece, the Department of Antiquities in Cyprus, the National Museum of Oriental Art in Italy and the Superintendence of Archaeological Goods in Italy for the exhibition titled *Lost Arts of the Ancient Goldsmiths. Jewellery Manufacturing in the Ancient Mediterranean World VII-I Century BC*, which was held at Malta's National Museum of Archaeology in 2002.

Recommendations

State indemnity is a definite way of saving on insurance costs. The professionals contacted proposed the creation of a European indemnity scheme and a network grouping together the countries which offer state indemnity or those which have accepted foreign indemnity as lenders, so that every European country will be able to benefit from the experience of others.

NORWAY

This report has been endorsed by Barbara de Haan, consultant at ABM-Utvikling, and Mette Michelsen, consultant for the Ministry of Foreign Affairs.

In Norway there are two state indemnity schemes: one is for incoming loans and is run by the Ministry of Culture and Church Affairs; the other is for outgoing loans and comes under the Ministry of Foreign Affairs.

Organisation of museums

Norway has about 800 museums. The Ministry of Culture is currently working towards a new regulation which will join the little museums to their larger counterparts in their respective subject areas, so as to end up with a hundred or so more professional and more profitable institutions.

A. MINISTRY OF CULTURE INDEMNITY SCHEME (INCOMING LOANS)

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	○
Scope	<i>Nail to nail</i>	○
	<i>Certain intervals excluded</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
	<i>Private museums</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

Introduction of scheme

The Ministry of Culture's indemnity scheme has been in existence since 1985 and was set up at the demand of museums in order to reduce insurance costs.

Regulations

There is no law governing the system, only a regulation.

II State indemnity coverage

Works covered

State indemnity can only be awarded for works borrowed from other countries in order to be shown in temporary exhibitions; it cannot be granted for long-term loans.

Scope

The text does not make reference to "nail-to-nail" coverage and stipulates that works are covered by state indemnity for damage and loss during their exhibition and storage; the indemnity can, however, be extended to cover part of or the entire transportation on demand, which is generally the case.

Risks not covered

The regulation does not cover all the risks and stipulates that the damage caused by acts of war is not covered. The risk of terrorism is covered.

III Eligibility criteria

Beneficiaries

All Norwegian museums and exhibition organisers are eligible.

Selection criteria

The works must belong to foreign lenders and must be of artistic, cultural, historical and scientific value.

Minimum and maximum limits

To be eligible, the works must have a minimum value of NOK 5 million.

No maximum limit has been set per project. However, the Ministry of Culture can only issue

a royal decree for a value up to NOK 10 million; government approval is required for larger amounts.

IV The way the system works

Institution

A public institution established in Oslo in January 2003 under the authority of the Ministry of Culture handles the state indemnity applications: ABM-Utvikling, the Norwegian Archive, Library and Museum Authority. Within ABM-Utvikling there is a government committee, elected every four years, which is in charge of state indemnity security and is responsible for approving the loan agreements and the security conditions at the exhibition venue.

Application procedures and contents

Applications must be sent to ABM-Utvikling at the latest five months before the commencement of the period of cover.

Applications must include:

- a presentation of the project
- a list of the works to be exhibited and their insured values
- a duly completed questionnaire on the security conditions
- a description of the transportation and exhibition of the works
- a copy of the loan agreements
- a copy of the report on the condition of the works (optional)

Evaluation mechanisms for works covered

The insured value of the works is estimated in the lender's currency by common agreement between the lender and borrower and must correspond to the art market value. The regulation makes no provision for currency devaluation.

Required security conditions

In order for state indemnity to be granted, the security conditions of the exhibition venue must first be approved by the aforementioned government committee.

Deductible/Borrower's liability

Reference is made to liability on the part of the borrower rather than to a deductible. The museum has to pay damages out of its own funds up to an amount set each year in the state budget. For the last three years, the amount has been NOK 200,000.

Maximum amount covered by the indemnity

The maximum value of the insured works is NOK 750 million per year.

Cost of state indemnity

State indemnity is provided free of charge.

Guarantee certificates

The certificate is issued in Norwegian. A copy has been attached.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the lender and ABM-Utvikling must be notified immediately. The damage report must be sent to ABM-Utvikling within two months of the occurrence.

Waiver of subrogation

The Ministry of Culture is entitled to take action against the organiser for damage resulting from a wrongful act committed deliberately or in negligence by the organiser or a third party acting on its behalf.

Compensation in the event of

- damage

In the event of damage, the compensation cannot under any circumstances exceed the value agreed upon by the lender and borrower. The indemnity covers the cost of restoration. The lender must approve the planned restoration work in writing and must undertake to carry it out. A sum – determined after the work has been restored – may be paid to compensate for its depreciation. The regulation makes no provision for the depreciation of a set of works.

- loss

In the event of the total loss of a work, the compensation corresponds to the agreed value.

Recovery of a work of art following compensation

The regulation stipulates that if a work is found after the lender has been compensated for total loss, the latter regains its work and is required to pay back the amount received as compensation, less the estimated cost of restoration and depreciation.

Beneficiary of compensation

The lender receives the compensation.

Institution responsible for compensation

ABM-Utvikling bears the cost of damage.

VI Competent court and applicable law

The courts of Norway have jurisdiction over any disputes that may arise and the applicable law is that of Norway.

VII Experience and recommendations

Problems and limitations of the system

Acts of war are excluded while terrorist acts are covered.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001	7	6	1	NOK 144 m	NOK 728 m	NOK 1,556 m
2002	4	3	1	NOK 189 m	NOK 64.5 m	NOK 841.5 m
2003	3	3	0	NOK 12 m	NOK 685.5 m	NOK 737.5 m

Experience as a lender

The museum professionals contacted are favourably inclined towards foreign state indemnities and are acquainted with the English, French, American and Swedish schemes.

Experience as a borrower

The Norwegian indemnity scheme is generally accepted by lenders, who do however require that acts of war are also covered. According to the professionals, this should therefore also be included in the state indemnity scheme.

Recommendations

The texts of other countries' state indemnity schemes should be more precise.

B. MINISTRY OF FOREIGN AFFAIRS INDEMNITY SCHEME (OUTGOING LOANS)

COVERAGE		
Works covered	<i>Outgoing loans</i>	×
	<i>Deposits</i>	×
	<i>National collections excluded</i>	○
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
	<i>Private museums</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

Introduction of scheme

The state indemnity granted by the Ministry of Foreign Affairs was set up in the 1980s with the aim of promoting Norwegian art in other countries.

Regulations

The guidelines for the government indemnity scheme for Norwegian exhibitions abroad (see annex) determine the procedures involved in this system.

II State indemnity coverage

Works covered

The state indemnity scheme covers Norwegian works shown in temporary exhibitions abroad. Deposits are not covered in the regulations currently in force.

Scope

Works are covered from nail to nail.

Risks not covered

Loss and damage resulting from hostilities between independent countries are excluded.

III Eligibility criteria

Beneficiaries

All Norwegian museums or institutions that lend works to other countries are eligible for indemnity cover. Indemnity can also be granted for exhibitions in which the museum that is the principal lender coordinates the borrowing of works from private collections.

Selection criteria

The indemnity scheme helps to promote Norwegian art abroad; it is available to Norwegian institutions that loan works of high artistic value.

Minimum and maximum limits

To be eligible, the works must have a minimum value of NOK 3 million. However, the Ministry of Foreign Affairs can, in certain cases, grant indemnity for works of a lower value, for specific projects.

No maximum limit has been set per project, but the total value of the exhibition cannot exceed the maximum annual amount.

IV The way the system works

Procedures

The institution requiring state indemnity must apply to the Ministry of Foreign Affairs before 15 May of the year preceding the exhibition. In some particular cases, applications may be accepted at deadlines that are closer to the exhibition date.

Only one museum submits an application for a group of works on loan by Norway for a specific occasion, even if the loans belong to the collections of many different museums.

Application procedures and contents

An application must include:

- a list of the works to be exhibited and their final insured values at the latest two months before the commencement of the period of cover
- a duly completed questionnaire on the security conditions

-
- information on the existence or absence of an indemnity scheme in the country hosting the exhibition and, if such a scheme exists, a copy of the relevant text
 - a copy of the loan agreement.

Evaluation mechanisms for works covered

The works are insured according to their agreed value.

Required security conditions

The lender must verify the security conditions at the exhibition venue.

Liability shared by lender and borrower

Reference is made to liability, which in this particular scheme is shared by the lender and borrower.

The lender covers the risks associated with transportation and storage at an amount corresponding to 1‰ of the value of the works and up to NOK 100,000.

The borrower covers the risks related to the exhibition at an amount corresponding to 1‰ of the value of the works and up to NOK 100,000.

Maximum amount covered

The Ministry of Foreign Affairs is able to cover a maximum amount of NOK 4.5 billion for 2004. The amount varies each year and is voted by Parliament upon recommendation by the MFA and listed in the Budget.

Cost of state indemnity

Indemnity is provided free of charge.

V Compensation mechanisms in the event of loss, theft or damage

Waiver of subrogation by the State

The Ministry of Foreign Affairs can take action against the organiser for damage resulting from a wrongful act committed deliberately or in negligence by the organiser or a third party acting on its behalf. The amount received as compensation may consequently be reduced.

Procedures to be followed in the event of damage

The borrower must immediately notify the lender, who must then relay the information to the Ministry of Foreign Affairs. It is incumbent upon the lender to declare any damage within three months of the return of the work.

Compensation in the event of

- damage

The compensation cannot under any circumstances exceed the value agreed upon by the lender and borrower and may be reduced in the event of an appeal.

The lender chooses the restorer and decides what restoration work is to be performed.

In the event of damage, the scheme covers the cost of restoration and depreciation.

- loss

In the event of the total loss of a work, the compensation corresponds to the agreed value.

Recovery of a work of art following compensation

Should a work be found after the lender has been compensated for total loss, the latter retrieves its work and is required to pay back the amount received as compensation, less the estimated cost of restoration and depreciation.

Beneficiary of compensation

In the event of damage or loss, the compensation is paid to the lender, but may be reduced if the latter is held liable.

VI Competent court and applicable law

The regulations do not specify which court has jurisdiction, but in the event of a dispute Norwegian law is applicable.

VII Experience and recommendations

Problems and limitations of the system

In the opinion of the museum professionals contacted, the lender should not be held liable for anything.

The distinction between "terrorist acts" and "hostilities between independent countries" should be clarified.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001	3	3	0	NOK 2,200,000	NOK 454,000,000	NOK 463,755,000
2002	3	3	0	NOK 108,330,000	NOK 373,355,000	NOK 596,054,000
2003	2	2	0	NOK 213,000,000	NOK 3,182,702,000	NOK 3,395,702,000

Experience as a lender

In order to avoid financial losses, the museum providing the loan requires that the borrower take out an insurance policy to cover the value for which the museum is liable (1% of the value and up to NOK 100,000, for transportation and storage).

Experience as a borrower

The scheme presents specific financial benefits for borrowers.

Recommendations

According to museum professionals, it should be reconsidered whether the lender should be liable for anything.

NETHERLANDS

This report has been endorsed by Astrid Weij, Advisor on International Affairs at the Cultural Heritage Directorate of the Ministry of Education, Culture and Science.

There is a state indemnity scheme in force in the Netherlands.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
Minimum/maximum limit per project	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

Organisation of museums

In the Netherlands, there are 26 national museums that are under the authority of the Ministry of Education, Culture and Science and 10 national museums that are answerable to other Ministries.

The buildings and collections of the national museums belong to the State, while each museum's management is assigned to a foundation.

There are also provincial and municipal museums, which benefit from public funding.

Introduction of scheme

State indemnity was created in the Netherlands in 1989 at the demand of museums in order to reduce insurance costs. Up until 1990 the system covered all losses. In 1990, a first loss insurance scheme – based on a percentage of the value of the works – was set up for the *Van Gogh* exhibition.

Regulations

There is no act or decree regarding state indemnity, but only a regulation in Dutch by the Ministry of Education, Culture and Science (Dutch acronym: OCW), which has been attached to this document. The Ministry decided that it was not worth translating the existing documents since the system is in the process of being updated.

II State indemnity coverage

Works covered

All works can be covered with the exception of works belonging to Dutch national collections. Works belonging to private collectors can be covered.

For the time being, deposits are not covered.

Scope

Works are covered from nail to nail.

Risks not covered

The Dutch indemnity scheme does not cover nuclear accidents.

The risk of terrorism is not explicitly excluded in the present regulation, but may be in the future regulation.

III Eligibility criteria

Beneficiaries

National museums and museums which are mostly financed with public funds are eligible for state indemnity cover. Private museums are excluded.

Selection criteria

The Netherlands Institute for Cultural Heritage, an organisation which is subject to the authority of the Ministry of Education, Culture and Science, gives its opinion on the scientific content of the exhibition after taking into consideration the following criteria:

- the innovative vision of the artist or period
- the quality with which the works are shown and the exhibition promoted
- the exhibition of works which have never before been shown in the Netherlands.

Minimum and maximum limits

There is no minimum limit per project. The maximum limit set per project is 227 million euro.

IV The way the system works

Institutions

Three institutions take part in the decision-making process for granting state indemnity: the Ministry of Education, Culture and Science, the Netherlands Institute for Cultural Heritage and the Ministry of Finance.

Application procedures and contents

The borrowing institution must apply to the Ministry of Education, Culture and Science at the latest three months before the period for which indemnity cover is required. If the application is valid, it is sent to the Netherlands Institute for Cultural Heritage, which gives its opinion on the scientific quality of the project and verifies the security and surrounding conditions pertaining to the exhibition of the works. Once the Netherlands Institute for Cultural Heritage has given its approval, the Ministry of Culture must then send the application to the Ministry of Finance, which verifies that the state indemnity will substantially reduce insurance costs and determines the amount of indemnity to be granted.

The final approval is given by the Secretary of State for Culture.

An application must include:

- a scientific presentation of the project
- the exhibition dates and period of state indemnity cover
- a list of the works to be exhibited and their insured values
- a budget estimate
- a report from an insurance broker consulted, in which the economies achieved from state indemnity coverage are mentioned
- a description of the transportation of the works
- a Facilities Report (security conditions related to the exhibition of the art works) and the questionnaire of the Netherlands Institute for Cultural Heritage on the security conditions.

Evaluation mechanisms for works covered

The works are insured according to their agreed value.

Required security conditions

The security and surrounding conditions pertaining to the exhibition of the works are verified and approved by the Netherlands Institute for Cultural Heritage.

Liability/Deductible

The Dutch system has the following characteristics:

- Museums are liable for the payment of first losses out of their own funds up to a maximum limit of 45,000 euro per exhibition.

- In theory, a museum has to pay damages up to the value of the exhibition's profits before it can have access to state indemnity. In practice, it is unlikely that this provision will be applied in the event of damage, because an exhibition does not, as a rule, make profits.
- A deductible has been set. The compensation awarded in the event of damage is a percentage of the insured value of the works. This percentage becomes smaller as the value of the works increases, as shown in the table below. The insurance broker calculates the premium rates based on the percentages granted by the state indemnity scheme. This system enables the insurance rates to be reduced by 15% to 20%.

Insured value of works	Compensation
0 - 250 million euro	5% of the insured value
250 - 500 million euro	5% of the first 250 million euro 3% of the remainder (250 million euro)
500 - 750 million euro	5% of the first 250 million euro 3% of the second 250 million euro 2% of the remainder (500 million euro)
750 million euro and above	5% of the first 250 million euro 3% of the second 250 million euro 2% of the third 250 million euro 1% of the remainder (750 million euro)

Maximum amount covered by the indemnity

The maximum amount covered per year is 227 million euro.

Cost of state indemnity

State indemnity is granted free of charge.

State guarantee certificates

The Ministry of Education, Culture and Science issues the guarantee certificates, an example of which has been attached.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the museum must notify the lender and Ministry of Culture without delay.

Waiver of subrogation

There is no waiver of subrogation against the organisers or any person contributing to the exhibition, carriers or packers.

Compensation in the event of

- damage

In the event of partial damage, the Ministry of Culture and the museum choose an expert, who estimates the cost of restoration and the depreciation of the work.

In the event of significant damage that calls into question the selfsame existence of the work, the Ministry of Culture pays the entire compensation corresponding to its agreed value and becomes the owner of the work. Should the lender wish to retain its ownership of the work in question, then the amount of compensation is negotiated.

- loss

In the event of the total loss of a work, the compensation paid corresponds to the agreed value. If the damaged work belongs to a series or a set of works, the state indemnity will cover the depreciation of the series or set.

Recovery of a work of art following compensation

Should a work be found after the lender has been compensated for total loss, the latter retrieves its work and is required to pay back the amount received as compensation, less the estimated cost of restoration and depreciation. The lender must retrieve its work within three months.

Institution responsible for compensation

In the event of damage, the cost of compensation will be assumed by the Ministry of Culture. If the amount is significant, the Ministry of Finance may also contribute.

Beneficiary of compensation

The beneficiary of the compensation is the borrowing institution, which then pays the amount to the lender.

VI Competent court and applicable law

Dutch law is applicable and the competent court is that of Amsterdam or Rotterdam.

VII Experience and recommendations

Problems and limitations of the system

The compensation granted is not sufficient to bring about a significant reduction in insurance premiums. The maximum percentage is 5% while, according to museum professionals, it should reach 10% in order to result in 30% savings in insurance costs.

Statistics

Since 1990, state indemnity has been requested for 39 projects. Of these 39 projects, 27 were

granted indemnity cover.

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001	2	2	0	NLG 5,000,000	NLG 25,000,000	NLG 30,000,000
2002	6	6	0	€4,500,000	€45,378,000	€77,760,000
2003	3	3	0	€2,000,000	€21,000,000	€28,000,000

Experience as a lender

The museum professionals contacted accept foreign state indemnities willingly. However, they sometimes find it difficult to understand the extent and scope of cover of these schemes. As regards collaboration with Eastern European countries, state indemnity is preferred to commercial insurance.

Experience as a borrower

A large number of lenders still prefer to use their own insurance and do not accept state indemnity, which, of course, has repercussions on the budget.

Recommendations

The desire expressed by the museum professionals that were contacted is that the Dutch system will become more like the British system (100% coverage) and that harmonisation will be achieved at the European level in order to promote the circulation of art works.

Recent developments

The deadlines and implementation procedures have recently become more flexible so that the system will be used more frequently and by more museums, thereby leading to the organisations of more international exhibitions.

Deposits will probably be covered in the new regulations, which should come into force in the second half of 2004.

POLAND

Despite many attempts to contact the Ministry of Culture, we were not able to have this report endorsed.

There is a state indemnity scheme in force in Poland.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	Y
	<i>Certain intervals excluded</i>	Y
Risks excluded		Y
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		○
Maximum amount		○
Cost of indemnity		○
Waiver of subrogation		Y

I Introduction

Organisation of museums

In Poland, museums are financed on a national, regional and municipal level.

Introduction of scheme

State indemnity goes back a long way in Poland. Before the indemnity scheme's recent institution, the government departments issued letters guaranteeing that the State would assume liability for works of art while they were on Polish territory.

Regulations

Act No. 75/484 and Decree No. 348/2003 define the procedure to be followed when applying

for state indemnity.

II State indemnity coverage

Works covered

The state indemnity scheme can cover any works of art that are not part of national collections and which are lent for exhibitions held by Polish national museums.

Scope

There is no specific regulatory provision.

Risks not covered

There is no specific regulatory provision.

III Eligibility criteria

Beneficiaries

All national museums and museums financed with public funds are eligible for state indemnity.

Selection criteria

In general, any exhibition can be covered by the state indemnity scheme.

Minimum limit

The exhibition's value must be greater than €500,000.

IV The way the system works

Institutions

The Ministry of Culture is responsible for making decisions regarding state indemnity. The Ministry of Finance takes subsequent action.

Application procedures and contents

The application must be accompanied by:

- general information on the exhibition organisers
- information regarding the exhibition venue and opening and closing dates

-
- a description of the purpose of the exhibition
 - an estimate of the value of the pieces exhibited
 - a detailed description of the security measures and conditions applied for the works during transportation and actual exhibition
 - a report from the Centre for the Protection of Public Collections regarding these measures and conditions
 - a draft loan agreement on the works to be shown in the exhibition.

Evaluation mechanisms for works covered

The value must be agreed upon by the lender and borrower.

Required security conditions

There is no specific regulatory provision.

Deductible/Liability

No deductible has been set.

Maximum amount covered by the indemnity

There is no limit.

Cost of state indemnity

None.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

There is no specific regulatory provision.

Waiver of subrogation

There is no specific regulatory provision.

Compensation in the event of

- damage

The law guarantees "the payment of compensation in the event of damage". Since there has been no case of damage pertaining to works covered by the state indemnity scheme, national museums have not had to deal with claims for compensation for damaged works.

- loss

The law guarantees "the payment of compensation in the event of loss". Since there has been no case of loss pertaining to works covered by the state indemnity scheme, national museums have not had to deal with claims for compensation for lost works.

Recovery of works after compensation

There is no specific regulatory provision.

Beneficiary of compensation

The compensation is paid directly to the lender.

VI Competent court and applicable law

Polish law is applicable and the competent court is that of Warsaw.

VII Experience and recommendations

Problems and limitations of the system

Works are not covered from nail to nail.

According to the information provided by the National Gallery in Warsaw and the Sztuki Museum in Lodz, the Polish system is not really useful to museums because of the lengthy procedures involved (one to two years).

Statistics

There are no statistics available.

Experience as a lender

Owing to the problems of the Polish indemnity scheme (see above), museums have to search for other means of covering their insurance costs. One of their options is to find insurance companies that are willing to act as sponsors.

PORTUGAL

This report has been endorsed by Anabela Carvalho, Museums Department Director, Portuguese Institute of Museums.

There is no state indemnity scheme in force in Portugal.

I Organisation of museums

The Portuguese Institute of Museums (IPM), a body of the Ministry of Culture, federates 29 museums and determines national museum policy; it is also responsible for establishing the rules governing the operation and management of subsidies.

II Ongoing discussions

For the moment, there are no plans to set up a state indemnity scheme in Portugal. A study is, however, being conducted with the aim of developing a new regulation concerning museum policy and the circulation of art works. Temporary exhibitions and state indemnity are covered in the study in question.

The IPM recently published a book on the circulation of art works for Portuguese museums, in which it included a paragraph on state indemnity schemes.

III Insurance costs

In the case of works belonging to Portugal's national collections, the State is its own insurer. Works are only covered during transportation when on loan between national museums. In all other cases, museums turn to specialist insurance companies. In the exhibitions organised by Portuguese museums, the works on show are mainly from their own collections and very few are borrowed, the reasons for this being financial (particularly high insurance costs).

The Belem Cultural Centre in particular had to give up its plans to borrow works from Russia for the *Malevitch and the Cinema* exhibition due to high insurance premiums.

Since 11 September 2001, Portuguese museums have been faced with higher insurance premiums, owing to the coverage of the risk of terrorism, among other reasons. Moreover, the imposition by insurance companies of increasingly restrictive conditions for the transportation and exhibition of works, in order to cover the risks of terrorism, vandalism and depreciation, has made the organisation of exhibitions in Africa and South America, particularly Brazil, more and more complicated.

IV Museum security levels

The security levels maintained by most Portuguese museums are now good enough for international exhibitions to be hosted, and the funds released for this purpose are more

substantial than before.

V Experience of state indemnity schemes as a lender

State indemnity is still not very well known in Portugal. Nevertheless, Portuguese museums willingly accept foreign state indemnity when lending works to other countries and are acquainted with the American, English and German indemnity schemes.

The National Museum of Ancient Art accepted American indemnity for the works loaned for the Vermeer exhibition held at the Metropolitan Museum of Art in 2001 and English indemnity for the Raphael exhibition held at the National Gallery of Art in 2004.

VI Experience of state indemnity schemes as a borrower

The Rebecca Horn exhibition to be held in 2005 at the Belem Cultural Centre, organised together with the United Kingdom and Germany, will be able to take place thanks to the British and German state indemnities, while the Belem Cultural Centre only needs to pay the insurance costs related to the exhibition venue in Lisbon (the transportation of the loans from and back to Germany and the United Kingdom will be covered by the two countries' respective indemnity schemes).

VII Recommendations

The economies achieved in insurance costs by the establishment of a state indemnity scheme in Portugal would enable the country's museums to enter the arena of major international exhibitions, an arena from which they are very often excluded at present.

SLOVAKIA

This report has been endorsed by Jana Kovacicova, Ministry of Culture.

There is no indemnity scheme in force in Slovakia.

I Organisation of museums

In Slovakia, a museum or gallery can be:

- established by state administration according to specific rules,
- established or founded by a superior regional body according to specific rules,
- established or founded by a municipality according to specific rules,
- established or founded by other legal entities according to specific rules.

There are national, regional and local museums.

II Ongoing discussions

There are no discussions in progress in Parliament regarding the institution of an indemnity scheme.

III Insurance costs

Insurance costs vary between 7‰ and 3% of the exhibits' value.

In the case of loans from state museums to regional museums (or vice versa), or between state museums, no insurance is taken out due to a lack of funds.

IV Existing security levels

No museum in Bratislava or elsewhere in Slovakia meets international security standards.

V Examples of exhibitions cancelled owing to insurance premiums

High insurance costs make it impossible for museums in Slovakia to organise major international exhibitions.

The exhibition titled *The Centre of Europe Around 1000 A.D.*, a joint German, Polish, Czech, Hungarian and Slovakian project which was inaugurated in 2000 and presented in Germany, Poland and Hungary, could not be held in Slovakia even though the country was one of the organisers and a principal lender. Slovakia was, in effect, unable to bear the insurance costs for the exhibition.

VI Experience

Experience as a lender

None.

Experience as a borrower

The exhibitions are either insured by the lender or not at all. Another way of obtaining funds for insurance is through grants. Grants can be obtained from the Ministry of Culture (for exhibitions of particular importance), from sponsors (but these are very difficult to find), or even from lottery funds, whose allocation is determined by the Ministry of Culture.

VII Cases of damage

There has been no case of damage in the last few years.

VIII Recommendations

State indemnity is not unknown in Slovakia. Provision is made in the national budget, but it is not accessible to the cultural sector or for the organisation of international exhibitions.

CZECH REPUBLIC

This report has been endorsed by Dagmar Sefčíková, Chief Officer of the Department of Movable Cultural Heritage, Museums and Galleries of the Ministry of Culture.

The Czech Republic does have a state indemnity scheme, but the implementing decrees have not yet been issued.

COVERAGE		
Works covered	<i>Incoming loans</i>	✗
	<i>National collections excluded</i>	✗
Scope	<i>Nail to nail</i>	Y
	<i>Certain intervals excluded</i>	Y
Risks excluded		Y
ELIGIBILITY CRITERIA		
	<i>Selected national museums</i>	✗
	<i>Other museums financed with public funds</i>	✗
Minimum/maximum limit per project		○
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		Y
Maximum amount		○
Cost of indemnity		○
Waiver of subrogation		Y

I Introduction

Organisation of museums

In the Czech Republic there are national, regional and private museums.

Introduction of scheme

The need to set up an indemnity scheme for incoming and outgoing loans for exhibitions held at national museums and galleries has been discussed within the Ministry of Culture and between it and the Ministry of Finance since 1995.

Regulations

Section 73 of Act No. 218/2000 on the budgetary rules of the Czech Republic stipulates that, if the case arises, state indemnity is granted by means of a decree.

II State indemnity coverage

Coverage is determined on a case by case basis in the decree issued each time, as mentioned above.

III Eligibility criteria

Beneficiaries

According to paragraph 74 of Act No. 218 of 2000, indemnity is granted to national museums.

IV The way the system works

This must still be defined by a ministerial decree.

V Compensation mechanisms in the event of loss, theft or damage

They must still be defined by a ministerial decree.

VI Competent court and applicable law

Czech law is applicable.

VII Experience and recommendations

Problems and limitations of the system

Given that indemnity is granted on a case by case basis by means of a special decree issued for every project, the procedures are relatively lengthy for the time being.

A new regulation is being prepared in order to facilitate the procedures involved in granting state indemnity.

Experience as a lender

According to the museum professionals contacted, it is sometimes difficult to accept foreign state indemnities because borrowers often fail to send the text of the country's equivalent legislation, the conditions under which the works will be exhibited and the Facilities Report. Moreover, where touring exhibitions are concerned, the terms pertaining to insuring the transportation of works are not always clear.

Recommendations

A European compensation system would be a good solution for touring exhibitions organised by many countries or shown in many countries.

ROMANIA

This report was submitted to Simona Tanasescu, Ministry of Culture and Religious Affairs.

In Romania, there is no indemnity scheme in force at present.

However, Article 4 of Act No. 44 of 30 January 2000 provides the legal basis for state indemnity to be granted. According to Article 6 of this act, an implementing decree is required. This decree has not been issued to this day. Consequently, the act is not yet applicable.

I Introduction

Organisation of museums

In Romania, there are 30 national museums, 14 regional museums, 42 municipal museums and many others.

Act No. 44 of 30 January 2000 contains the following information (which is not applicable because of the absence of a decree).

II State indemnity coverage

Works covered

As regards cultural exchanges between Romania and other countries, the law stipulates that state indemnity can be used to cover foreign movable cultural goods that are temporarily exhibited on Romanian territory as well as Romanian cultural goods that are exhibited abroad.

Scope

To be specified in the decree.

Risks not covered

To be specified in the decree.

III Eligibility criteria

Beneficiaries

Only museums that are administered by the State are eligible for state indemnity.

Selection criteria

The Museums and Galleries Board (advisory board of the Ministry of Culture and Religious Affairs) submits proposals for objects requiring insurance and the Ministry decides on the issue.

Minimum and maximum limits

To be specified in the decree.

IV The way the system works

Institutions

The Ministry of Culture and Religious Affairs is responsible for making decisions concerning state indemnity.

Application procedures and contents

To be specified in the decree.

Evaluation mechanisms for works covered

To be specified in the decree.

Required security conditions

To be specified in the decree.

Deductible/Liability

To be specified in the decree.

Maximum amount covered by the indemnity

To be specified in the decree.

Cost of state indemnity

To be specified in the decree.

V Compensation mechanisms in the event of loss, theft or damage

Procedure to be followed in the event of damage

To be specified in the decree.

Waiver of subrogation

To be specified in the decree.

Compensation in the event of

- damage

To be specified in the decree.

- loss

To be specified in the decree.

Recovery of works after compensation

To be specified in the decree.

Beneficiary of compensation

To be specified in the decree.

VI Competent court and applicable law

Only Romanian law is applicable.

VII Experience and recommendations

Problems and limitations of the system

Given that the decree has not been promulgated, the system is not in force. There has thus been no practical experience of the system.

Exhibitions which are held in Romania must consequently be insured with commercial insurance companies.

Statistics

The system is not in use for the time being.

Recommendations

According to the professionals employed in the Ministry, state indemnity would help museums to organise more exhibitions. It would also be desirable for both large and small museums to be able to benefit from the system.

UNITED KINGDOM

This report has been endorsed by Gregory Eades, MLA, and amended by Rosalie Cass, National Gallery.

There is a state indemnity scheme in force in the United Kingdom.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>Deposits</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
	<i>Private museums</i>	×
Minimum/maximum limit per project		○
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		×
Cost of indemnity		○
Waiver of subrogation		○

I Introduction

Organisation of museums

In December 2003, the Museum Registration Scheme of the Museums, Libraries and Archives Council (MLA) listed 1,851 museums in the United Kingdom: 53 national museums, 682 museums administered by local communities, 158 museums that come under the National Trust, 89 museums administered by universities, 100 museums administered by the army, 34 museums administered by central government and 735 museums administered by private institutions.

Introduction of scheme

Section 16 of the National Heritage Act 1980 laid down the foundations of the British state compensation scheme. The system's main objective was to offer the country's museums,

galleries and libraries an alternative to the considerable premiums quoted by insurance companies (which increased rapidly in the early 1980s). In 1985, the Museums & Galleries Commission (today's Museums, Libraries and Archives Council – MLA) was entrusted with the management of the Government Indemnity Scheme (GIS). In 1989, the same body was charged with the management of state indemnity applications for works borrowed by "non-national" museums, galleries and libraries. On the other hand, the incoming loans of "national" museums are handled by the British government's Department for Culture, Media and Sport (DCMS).

II State indemnity coverage

Works covered

The GIS only covers works on loan within the United Kingdom (whether they come from the United Kingdom or another country), with the exception of works belonging to the United Kingdom's national collections. Practically any object made accessible to the public can be covered by the scheme if it contributes to a better understanding and appreciation of art and culture. The scheme covers loans that are exhibited in temporary exhibitions or which are on long-term loan.

Scope

The indemnity scheme covers works from nail to nail, namely during transportation, packing and unpacking, the exhibition and conservation.

Risks not covered

The GIS does not cover any damage or loss in the following cases:

- war or armed conflict of any type (damage caused by war, for example by an aeroplane shot down in a war zone)
- the negligence or other wrongful act on the part of the owner, its agents or personnel
- the poor condition of the object at the time of its loan to the borrower (namely an inherent vice which could lead to further damage)
- a claim by a third party claiming to be entitled to the object
- restoration or conservation work undertaken on the object by the borrower, its personnel or agents with the consent of the owner.

All other risks, including acts of terrorism, insurrections or revolts are covered.

III Eligibility criteria

Beneficiaries

All public museums, galleries and libraries – including local university museums – are automatically eligible, as is the National Trust. Other institutions, such as independent museums, must have their application approved by the Treasury.

Selection criteria

National museums are automatically eligible (see above). Where non-national museums are concerned, once a request for indemnity is made, the MLA judges whether the loan is for the public benefit and if the public has access to it throughout the exhibition. The MLA's expert consultants must then approve the environmental control measures, the security measures taken at the exhibition venues and the estimated value of the borrowed works.

Minimum and maximum limits

No minimum or maximum limit has been set for eligibility.

IV The way the system works

Institutions

All state indemnities are granted by the Department for Culture, Media and Sport in England, the Scottish Executive Education Department, the National Assembly in Wales and the Department of Education in Northern Ireland.

Application procedure and contents

All applications made by non-national borrowers must be submitted to the MLA three months before cover is required. The application must contain precise information about the exhibition (or long-term loan), the transport dates, the exhibition dates, a complete description of the objects, the names and addresses of the lenders, the value of the loans as well as good-quality photos of the objects. Other information may also be required.

If a touring exhibition is being planned, every exhibition venue must apply to the MLA separately. Guarantee certificates are generally sent about ten days before the requested commencement date. The lender receives a copy of the guarantee certificate together with the loan agreement (the original is kept by the borrower, namely the museum, gallery or library concerned).

The system differs somewhat for national institutions. These do not submit any application since they are automatically eligible, but only need to request a guarantee certificate.

Evaluation mechanisms for works covered

The object's estimated value must first be accepted before the loan is approved. This value

must be a fair estimate of the object's current market value, that is to say must reflect the price that the object would have attained if it were sold.

Required security conditions

Only companies that comply with the required transportation conditions are authorised to transport works under state indemnity. These include companies specialising in the transportation of works of art, for example companies with vehicles that are specially adapted for such use.

The security on the borrowing institution's premises must meet traditional security standards. The security measures taken must include an automatic fire detector system, a guard or security team to watch over the equipment when the institution is closed, an alarm system connected directly to an alarm receiving centre, security barriers in front of the art works, etc. The security of the institution concerned is subject to the approval of the National Security Adviser at the MLA.

Non-national museums must take the necessary steps to ensure that the required security conditions are met at exhibition venues. They must provide an outline of these conditions (humidity, temperature and light levels) and obtain the approval of the Environmental Adviser at the MLA. The borrower must undertake to maintain the appropriate physical and environmental conditions at all times in order to prevent, to the extent possible, any deterioration of the object.

Where loans to national museums are concerned, the lending institution determines the environmental conditions that need to be met by the borrowing institution.

Deductible/Liability

The GIS has introduced a minimum liability clause in order to encourage borrowers to assume their responsibilities and to eliminate small claims.

National museums have a minimum liability of £5,000 per year. This is also applicable to non-national museums under a particular status, which are able to choose between a minimum liability arrangement and that described below. Non-national museums must meet the cost of any loss of an insured loan up to a limit of:

- £300 where an object is valued at less than £4,000;
- £300 plus 1% of the object's total value where that value is £4,000 and above.

The borrower is free to pay the deductible out of its own funds or to purchase commercial insurance. The lender may decline the deductible, but must provide written notification before the state indemnity becomes effective.

Maximum amount covered by the indemnity

The overall amount for England is £1.1 billion for non-national institutions. The figures for Scotland (£70 million) and Wales (£35 million) are much lower, since they have fewer loans and exhibitions. The total for Great Britain is consequently £1.205 billion.

No such maximum amount exists for national institutions.

Cost of state indemnity

None.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

The borrower must notify the relevant department (DCMS or MLA) at once of any loss or damage of a work covered by the indemnity scheme. The borrower must not attempt any restoration or conservation work without the lender's consent.

Waiver of subrogation

There is no waiver of subrogation clause.

Compensation in the event of damage

If an object is damaged, compensation will consist of the cost of reasonable repairs and any depreciation resulting from the aforementioned repair work up to an amount agreed upon by the owner and Secretary of State and not exceeding the agreed value.

Compensation in the event of the loss of a work

In the event of loss or irreparable damage, the compensation (including the borrower's liability) will be determined according to the agreed value. In the event that books, manuscripts or archive material is lost, compensation will be based on the value agreed upon by the owner and Secretary of State.

Recovery of works after compensation

If an object which was lost is subsequently recovered and restored to the owner, the owner must immediately repay to the Secretary of State any sum received under the state indemnity, less the total estimated depreciation of the object.

Beneficiary of compensation

Compensation is paid to the owner.

VI Competent court and applicable law

Any dispute or difference between the borrower and the Secretary of State in connection with the indemnity is settled by a sole arbitrator. The arbitrator shall be appointed by agreement between the lender and the Secretary of State or, in default of agreement, by the serving president of the Law Society of England (or the Law Society of Scotland if the indemnity was issued by the Scottish ministers). The arbitration takes place in London (or Edinburgh, as applicable).

VII Experience and recommendations

Problems and limitations of the system

Action cannot be taken against other parties such as carriers.

Exhibition partners cannot be entered as co-insured parties as would be the case with a private insurance policy.

If a lender insists on its loans being insured at a given amount and this figure is judged to be too high by the borrower in the United Kingdom (or by the state indemnity provider), the borrower cannot automatically purchase a commercial insurance policy to complement the state indemnity provided. The regulatory provisions pertaining to this combined system are complicated and the procedures very lengthy.

National institutions that organise touring exhibitions within the United Kingdom may use state indemnity for the entire tour in order to cover the risks at other venues as long as they are responsible for the exhibition. This rule does not apply to non-national institutions holding touring exhibitions: each non-national institution that hosts the exhibition must submit a separate application for state indemnity.

Statistics

According to the DCMS, the British government commits itself to 3 to 4 billion pounds each year. At a hypothetical rate of 0.5%, the United Kingdom's indemnity scheme saves museums 15 to 20 million pounds per year.

Moreover, substantial amounts are saved with respect to the risk of terrorism during transportation and in situ since this risk is covered by the scheme.

The DCMS has very few claims: over the last ten years, only three claims for damages were made each year.

The MLA provided the following figures on non-national institutions only:

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001	174	127	37	£3,500	£457,000,000	£2,724,000,000
2002	219	157	62	£3,500	£340,000,000	£2,533,000,000
2003	169	120	49	£3,500	£330,000,000	£2,004,000,000

Experience as a borrower

The GIS has insured loans from museums and galleries all over the world, including the Louvre (Paris), the Prado (Madrid), the Metropolitan Museum of Art (New York), the Rijksmuseum (Amsterdam), the Szépművészeti (Budapest), the Art Institute (Chicago), the State Museum of Ukrainian Art (Kiev), not to mention the numerous objects borrowed from

private lenders throughout the world.

In the opinion of the MLA, the British programme works very well and is accepted by most lenders abroad, with the exception of many German lenders, possibly because of the absence of a waiver of subrogation clause.

Recommendations

The United Kingdom's government should continue to support the MLA and the National Security Adviser, whose work is greatly appreciated.

SLOVENIA

This report has been endorsed by Tanja Rozenbergar-Sega, Ministry of Culture.

There is no state indemnity scheme in force in Slovenia.

I Organisation of museums

Slovenia today has a network of forty-nine national galleries, collections and museums and one hundred and three private museums and galleries.

In Slovenia, a distinction should be made between government, regional, municipal and community institutions on the one hand and private museums on the other.

The law (Articles 19, 20 and 22 ZVKD, *Official Journal RS*, No. 7 1999) stipulates that the public services provided by national museums and the network of regional and municipal museums aim at the protection of the country's heritage. Municipal and private museums cooperate with regional and national museums as regards the public services they provide.

Slovenia's national museums are:

- The National Museum of Slovenia, comprising archaeology, numismatic, history of art and applied arts departments
- Slovenian Ethnographic Museum
- Technical Museum of Slovenia
- Slovenian Museum of Natural History
- National Museum of Contemporary History
- National Theatre Museum

The country's regional, urban, community and inter-community museums as well as the specialised museums maintain a regional cultural policy.

Private museums are founded by natural or juristic persons, in accordance with the ZVKD. In order to develop their activities as regards the protection of Slovenia's heritage, they join forces with national, regional, urban, inter-community and specialised museums (Kobarid Museum, Brewing Museum, etc.).

II Ongoing discussions

The Ministry of Culture has dismissed the idea of establishing a state indemnity scheme in Slovenia.

III Insurance costs

According to the Ministry of Culture, the high insurance costs involved in exhibitions are a major problem. It should be noted that the cost is even higher since a special insurance policy has to be taken out for every type of risk (fire, theft, deterioration, etc.).

State indemnity would go a long way towards helping museums organise more international exhibitions. However, organisers are aware of the fact that Slovenia is a small country and can consequently only expect a relatively restricted number of potential visitors.

IV Existing security levels

Currently, no museum meets international standards, except for the National Museum in Ljubljana. Significant changes are, however, being made. For example, the Ethnographic Museum in Ljubljana is moving to a new building that meets international criteria. Furthermore, 2007 will see the completion of the new Slovenian Museum of Natural History, which will also comply with international standards.

V Examples of exhibitions cancelled owing to insurance premiums

There are no specific examples of exhibitions that had to be cancelled due to excessive insurance costs.

VI Experience

Experience as a lender

The National Gallery lent certain pieces to the National Gallery of Ireland in Dublin for the *New Frontiers* exhibition. The pieces were covered by the Irish indemnity scheme.

The National Gallery has also had some experience with the Yugoslavian indemnity scheme.

Experience as a borrower

Slovenian museums are faced with a serious shortage of financial resources. As a result, very few foreign exhibitions are brought to the country.

The Ethnographic Museum had planned to borrow an exhibition from Vienna, but did not succeed as the different foreign museums involved each insisted on their own insurance schemes.

The National Gallery only held one foreign exhibition, this time from Spain. The entire project, including the insurance costs, was financed by Spain.

VII Cases of damage

None.

VIII Recommendations

A state indemnity scheme that would be the same in all European countries would be useful.

SWEDEN

This report has been endorsed by Agneta Westlund, official in charge of state indemnity at the Swedish National Council for Cultural Affairs, Kulturrådet.

There is a state indemnity scheme in force in Sweden.

COVERAGE		
Works covered	<i>Incoming loans</i>	×
	<i>Outgoing loans</i>	×
	<i>Deposits</i>	×
	<i>National collections excluded</i>	×
Scope	<i>Nail to nail</i>	×
	<i>Certain intervals excluded</i>	×
Risks excluded	<i>Acts of war and nuclear threats</i>	×
ELIGIBILITY CRITERIA		
Beneficiaries	<i>All national museums</i>	×
	<i>Other museums financed with public funds</i>	×
	<i>Private museums</i>	×
Minimum/maximum limit per project	<i>Minimum limit</i>	×
	<i>Maximum limit</i>	×
THE WAY THE SYSTEM WORKS		
Self risk/Deductible		×
Maximum amount		○
Cost of indemnity		×
Waiver of subrogation		○

I Introduction

Organisation of museums

Sweden has twenty national museums, of which eighteen are in Stockholm and two in Göteborg, and twenty-four regional museums, some of which are state subsidised.

Introduction of scheme

Sweden's indemnity scheme has existed since 1974. Up until 1998, only national museums could benefit from it. Since that date, all Swedish museums have been eligible. This change was in response to the political will to make Swedish culture accessible to all.

The Swedish state indemnity scheme is governed by the National Council for Cultural Affairs, in collaboration with the *Kammarkollegiet* as regards security issues in particular.

The National Council for Cultural Affairs is subject to the authority of the *Kulturrådet* (Ministry of Culture), while the *Kammarkollegiet* (Legal, financial and administrative services agency) is answerable to the Ministry of Justice. The *Kammarkollegiet* has a long history in Sweden; it is particularly responsible for insuring state property, hence works belonging to national museums. Sweden's national museums are insured by this public institution, since they are not able to take out commercial insurance.

Regulations

Act SFS 1998:200 governs state indemnity in Sweden. The Act has been translated into English. There is no implementing decree.

II State indemnity coverage

Works covered

All works can be covered by the indemnity scheme, with the exception of works belonging to Swedish national collections. The scheme can also cover deposits from foreign collections.

Scope

Works are covered from nail to nail. However, certain intervals – particularly when the works are in transit – during which the risks are deemed to be too high can be excluded.

Risks not covered

The risks related to acts of war and natural disasters are excluded.

The risk of terrorism is included, both during transportation and while the loan remains in Sweden, but this is not specified in the Act.

III Eligibility criteria

Beneficiaries

All museums, including private museums, are eligible for state indemnity.

Selection criteria

Exhibition projects must bring together works of definite cultural interest.

Minimum and maximum limits

In order to be eligible for state indemnity, works must be worth at least SEK 20,000 for

exhibitions held at a single exhibition venue and SEK 200,000 for touring exhibitions. The maximum limit per project is set at 3 million SEK.

IV The way the system works

Institution

The Swedish state indemnity scheme is governed by the National Council for Cultural Affairs in collaboration with the *Kammarkollegiet*. No specific board has been formed to manage the scheme.

Application procedures and contents

The borrowing institution sends its application to the National Council for Cultural Affairs, which forwards it to the *Kammarkollegiet*. The latter gives its opinion on the security conditions related to the exhibition of the works. Once the *Kammarkollegiet* has given its approval, the National Council for Cultural Affairs grants indemnity.

Applications should be sent at least three months before the commencement of cover and should include:

- a scientific presentation of the project
- the exhibition dates and period of state indemnity cover
- a list of the works to be exhibited and the insured value of each object, as well as the overall value of the exhibition
- a description of the transportation of the works
- a Facilities Report (security conditions related to the exhibition of the works).

Evaluation mechanisms for works covered

The works are insured according to their agreed value.

Required security conditions

The required security conditions are determined for each project by an expert from the *Kammarkollegiet* who, if necessary, follows the progress of the work that has to be carried out.

Deductible/Liability

Since Sweden's national museums are not permitted to insure themselves with private insurance companies, they must bear the first losses (not covered by the state indemnity scheme) out of their own funds: this is therefore a matter of self risk.

There are eleven levels of self risk:

Deductible/Self risk	Value covered by the Swedish State
SEK 20,000	less than SEK 1 million
SEK 30,000	between SEK 1 million and SEK 9,999,999
SEK 40,000	between SEK 10 million and SEK 19,999,999
SEK 50,000	between SEK 20 million and SEK 29,999,999
SEK 60,000	between SEK 30 million and SEK 39,999,999
SEK 70,000	between SEK 40 million and SEK 49,999,999
SEK 80,000	between SEK 50 million and SEK 59,999,999
SEK 90,000	between SEK 60 million and SEK 69,999,999
SEK 100,000	between SEK 70 million and SEK 79,999,999
SEK 110,000	between SEK 80 million and SEK 89,999,999
SEK 120,000	above SEK 90 million

Maximum amount covered by the indemnity

No limit has been set.

Cost of state indemnity

The cost includes:

- a fixed amount of SEK 3,000
- a sum equal to 0.05‰ of the overall value of the exhibition. This sum should be between SEK 1,000 and SEK 100,000.

State guarantee certificates

Guarantee certificates are issued by the museums and signed by the National Council for Cultural Affairs.

V Compensation mechanisms in the event of loss, theft or damage

Procedures followed in the event of damage

In the event of damage, the museum must immediately notify the National Council for Cultural Affairs, which then informs the *Kammarkollegiet*.

Waiver of subrogation

There is no waiver of subrogation clause.

Compensation in the event of

- damage

In the event of damage, the National Council for Cultural Affairs pays the entire compensation to the lender (namely the cost of restoration and depreciation) according to the instructions of the *Kammarkollegiet*.

- loss

In the event of the total loss of a work, the compensation paid corresponds to the agreed

value. If the damaged work belongs to a series or a set of works, the indemnity scheme will cover the depreciation of the series or set.

Recovery of a work of art following compensation

In the event that a work is found after the lender has been compensated for total loss, the latter retrieves its work and is required to pay back the amount received as compensation, less the estimated cost of restoration and depreciation.

Institution responsible for compensation

The *Kulturrådet* (Ministry of Culture) bears the cost of compensation.

Beneficiary of compensation

The National Council for Cultural Affairs pays the compensation to the lender.

VI Competent court and applicable law

In the event of a dispute, Swedish law is applicable and the competent courts are the courts of Stockholm.

VII Experience and recommendations

Problems and limitations of the system

For the time being, state indemnity is restricted to works exhibited inside museums. It would be preferable if works exhibited outdoors were also covered.

Statistics

	Number of requests	Number of applications accepted	Number of applications rejected	Minimum sum insured for an exhibition	Maximum sum insured for an exhibition	Overall amount insured for the year
2001	53	48	5	SEK 265,000	SEK 1,072,628,888	SEK 2,690,775,051
2002	59	49	10	SEK 370,000	SEK 1,064,482,000	SEK 3,520,232,138
2003	45	42	3	SEK 370,000	SEK 1,358,212,000	SEK 2,965,204,426

Grounds for refusing state indemnity

The exclusion of the risk associated with acts of war is sometimes one of the reasons why Swedish indemnity is rejected. However, when lenders demand that this risk is also covered, national museums can "purchase" this coverage from the *Kammarkollegiet*.

Experience as a lender

Swedish museums willingly accept other countries' indemnity schemes. The Moderna Museet recently accepted French indemnity for a loan of works by Miro, which were exhibited at the

Georges Pompidou National Centre for Art and Culture.

The Swedish indemnity scheme is able to cover the works of Swedish national collections that are exhibited abroad, as was the case in 2002 for the *Utopia and Reality* exhibition held at the Bard Graduate Center for Studies in the Decorative Arts, Design and Culture in New York. However, when lending works to other countries, some museums, the Nationalmuseum in particular, prefer these works to be covered by the borrower.

Experience as a borrower

The country's indemnity scheme is accepted by foreign museums, but the risk of war should also be included, as lenders demand it more and more frequently.

Recent developments

Before 1998, state indemnity coverage was provided free of charge; this is no longer the case for museums.

SWITZERLAND

This report has been endorsed by Daniel Zimmermann, Federal Office for Culture, Berne.

There is no state indemnity scheme in force in Switzerland.

I Organisation of museums

Switzerland is a federal state. There are consequently few national museums (mainly historical museums). All the major art museums are either subsidised or financed entirely by cantons or municipalities.

II Ongoing discussions

In 1998, the Federal Office for Culture (*Bundesamt für Kultur*) made the establishment of a state indemnity scheme a priority in its cultural policy. Consideration is currently being given to the question of funding and ways of removing the existing obstacles resulting from the fact that it is the federal system of the Swiss Confederation that has jurisdiction over cultural matters and not the State.

III Insurance costs

The Federal Office for Culture conducted a survey on forty-eight Swiss museums. It turned out that for the majority, insurance costs act as a brake on exhibition planning. Insurance premiums have risen by 20% to 30% since 1 January 2004.

Insurance costs constitute approximately 15% to 30% of an exhibition budget.

IV Existing security levels

Museums, in any case the most important of them, meet international standards.

V Examples of exhibitions cancelled owing to insurance premiums

There is no known case of an exhibition being cancelled solely owing to high insurance premiums. Given that the rise in the premiums was a recent occurrence, its impact cannot as yet be predicted.

VI Experience

Experience as a lender

Swiss museums accept foreign state indemnities, but the opportunity rarely occurs.

Experience as a borrower

Insurance policies were taken out with insurance companies, without any exception.

VII Cases of damage

No notable case.

VIII Recommendations

The *Öffentliche Kunstsammlung* in Basel fears that Swiss museums will not be able to maintain the standards of major international museums if a state indemnity scheme is not set up.

Legal framework

The proposals presented in this report are binding only upon their authors and must in no case be considered as necessarily expressing the views of the European Commission. They must meet the following three objectives: conformity with law, economic effectiveness and contribution to cultural development.

In particular, any recommendations concerning possible Community measures applicable to state indemnity schemes must be in accordance with Community law.

State indemnities allow the beneficiaries to save on the cost of insurance premiums associated with exhibitions of works of art. In this context, any incentive measures adopted by the Community must take care to maintain the balance between conserving national and regional diversity and bringing the common cultural heritage to the fore, as required by Article 151 of the TEC. State indemnity schemes, moreover, may disturb the operation of the insurance market and put Member States at risk of having state indemnities regarded as inadmissible subsidies in the sense of Article 87 of the TEC. Recommendations on state indemnities must, therefore, respect the legal constraints applicable to subsidies and defined by the Treaty establishing the European Community.

A. Article 151 of the TEC

Article 151 of the TEC means that the principle of subsidiarity that underlies Community action in the cultural domain must be taken into account when recommendations on state indemnities are devised. Moreover, any action undertaken by the Community must, on the basis of this article, be limited to promoting non-commercial cultural exchanges (Article 151, paragraph 2, third indent) and to fostering co-operation with third countries (Article 151, paragraph 3). Finally, Article 151 also requires the Community to take cultural aspects into account in its action under other provisions of this Treaty.

A1 Subsidiarity

Given that the Community does not have exclusive competence in the cultural domain, it is obliged to restrict the exercise of its powers in accordance with the principle of subsidiarity as defined in Article 5, paragraph 2, of the TEC and supplemented in Article 151, paragraph 2 of that same Treaty.

I: Introduction of a “European State Indemnity” as an incentive measure

The principle of subsidiarity will apply particularly if the Community not only makes recommendations to the Member States but also frames incentive measures.

The question, then, is how to devise a “European State Indemnity” that respects the constraints of the principle of subsidiarity.

The principle of subsidiarity allows the Community to act only if and insofar as the objects of the proposed action cannot be sufficiently achieved on the level of the Member States and the action can therefore be better realised through Community intervention.

In its resolution on the 1st Report on the Consideration of Cultural Aspects in European Community Action, the European Parliament gave this principle a fairly broad interpretation. In the opinion of the Parliament, “*it is important for the subsidiarity principle to be interpreted in a positive sense which encourages Community intervention, provided that this is beneficial to European cultures and helps create the conditions for the full involvement of the general public and local, regional and national bodies in the creation of a strong, united Europe*”¹⁵.

The implementation of the principle of subsidiarity is mainly based on the *Protocol on the application of the principles of subsidiarity and proportionality* (annexed to the TEC since the Treaty of Amsterdam), which makes specific provisions relating to the following three points.

► The area towards which the action is directed must have transnational aspects that cannot be satisfactorily regulated by measures taken by the Member States.

In the case in point, this criterion is met. There are, indeed, Member States in which important transnational exhibitions could not be held because of the high cost of commercial insurance and the lack or insufficiency of the state indemnity. This situation constitutes an obstacle to cultural exchanges.

► The Amsterdam protocol provides that the Community may act when the effect of the provisions of the TEC is undermined by national measures or by the lack of Community measures.

The fact that the Member States have very different financial means, a situation that has worsened since the enlargement of the Union, leads to a concentration of cultural activity in certain of them: their large museums, with their wealth of experience, can make use of longstanding associations as well as of existing state indemnities. What is more, even where state indemnity systems do exist, they are often set up on very different foundations, with the result that some museums may find it hard to persuade lending institutions accustomed to higher standards. In the absence of Community action, this situation bears most heavily on cultural exchanges between “old” and “new” Member States, which are of capital importance in the process of creating a shared European identity and citizenship.

► Finally, the Amsterdam protocol specifies that actions taken by the Community must, by reason of their scale or effect, have clear advantages over those taken by individual Member States. (Protocol, Chapter 5).

On this level, the advantages of a Community system are obvious. The conception and organisation of exhibitions would no longer depend solely on the finances of the individual state, and cultural criteria could play a more important role.

¹⁵ COM/96/160/final, Official Journal of the European Communities C 55, 24/02/1997, p. 37.

It should be noted, however, that the object of Community action is not to harmonise existing national measures or replace them with European ones. It is merely a question of proposing complementary measures that would strengthen cultural interchange.

The principle of subsidiarity does not reside in the prohibition of Community action, but rather in the protection of the sovereignty of Member States. The Community must therefore be able to act, at least when its actions do not restrict the freedom of action of the individual Member States or their national political and cultural activity.

From this point of view, a European indemnity system would comply with the requirements of the principle of subsidiarity.

II Recommendations to Member States

The principle of subsidiarity also imposes a certain reserve upon the Community, in relation to countries without a state indemnity system, in that it only sanctions the making of recommendations to Member States. The terms “encourage” and “support” used in Article 151, paragraph 2, of the TEC presuppose the existence, in the countries in question, of a national scheme that Community action would reinforce. Thus the legality of Community measures would depend on the reason why certain states do not have a state indemnity system. If in any country the absence of such system is a result of a clear decision against the introduction of such an indemnity, the Community would be unable to act. This is only true, however, where the rejection is based on cultural policy. If the reasons for the refusal of such a system were purely financial, the principle of subsidiarity would not preclude a Community recommendation or measure, since no question of cultural policy would be involved. Similarly, if a state indemnity does not exist because the state in question has not yet become aware of the problem, then again the principle of subsidiarity does not stand in the way of Community action. Indeed, from the point of view of respect for competences, the Community might well suggest some form of co-operation in a sector as yet very little developed¹⁶.

There is no indication that any Member State has, to date, refused to introduce a state indemnity for reasons of cultural policy. Both recommendations made to Member States and the institution of a European indemnity system are therefore compatible with the principle of subsidiarity. It is perhaps useful to make it clear that while Community recommendations are intended to encourage Member States to act, they can in any case act with or without any such recommendation.

A2 Restriction to non-commercial exchanges

According to Article 151 of the TEC, it is only non-commercial cultural exchanges that can be supported by Community action. This entails a certain vigilance, for the actors may, in practice, be tempted to substitute the expression “primarily cultural objectives” for the term “non-commercial cultural exchanges”¹⁷. The specification of possible incentive measures thus depends strongly on the definition of the term “non-commercial”.

¹⁶ Grabitz/Hilf-Ress/Ukrow, Art. 151 No. 17.

¹⁷ Proposed by the European Parliament in its resolution on the Commission’s 1st Report on the Consideration of

An exchange – in this case, that is, the loan of works of art – is said to be non-commercial when its object is not to generate income¹⁸. The fact that some compensation is demanded does not constitute an obstacle¹⁹. This practice has become common in recent years (cf. Article 8 of the chapter on “Loans” in the “General Principles of Managing Loans and Exchanges of Works of Art between Institutions”²⁰, a code of ethics and rules of practice drawn up by more than 40 important museums in 12 European countries plus Canada and the USA). The compensation in question does not necessarily have to be financial²¹: assistance in carrying out archaeological excavations, for example, could equally be taken into consideration. An exchange may, however, be considered to be commercial when the compensation exceeds the costs incurred by the lender in relation to the loan.

Nor is a cultural exchange considered commercial when income that may be derived from an exhibition is used to promote cultural exchanges or for cultural projects of a general nature (for buying works of art for public collections, for example)²².

This interpretation would permit incentives for a large percentage of exhibitions, as “non-commercial” operations.

A3 Co-operation with third countries

In accordance with Article 151, paragraph 3, of the TEC, the Community and its Member States encourage co-operation with third countries and with those international organisations that have a competence in the cultural domain, and in particular with the Council of Europe.

With regard to third countries, priority should perhaps be given to those states that will sooner or later become members of the Community (particularly Bulgaria and Romania), since the cultural provisions of the agreements that have been concluded with these countries provide, in part, for the possibility of including them in Community programmes.

Of the international organisations, UNESCO is far and away the most important partner in the sphere of co-operation.

In November 2001 UNESCO adopted an action plan for cultural diversity, which was used by the Commission as a basis for drafting “some initial elements for a declaration on behalf of the European Community and its Member States, with a view to the presentation of a common position on the question of devising a normative instrument on cultural diversity at the next UNESCO General Conference”, which it presented to the Council and the European Parliament on 23 August 2003 (“Towards an international instrument on cultural diversity”, pp 9 et seq.)²³.

One of the concrete objectives expressed in this document is to “develop international cultural co-operation, aimed at boosting the exchanges of cultural goods and services, including those in provenance of developing countries. In this respect, regular meetings between professionals

Cultural Aspects in European Community Action, COM(96)0160 C4-0249/93, Official Journal of the European Communities C55, 24 February 1997, p. 37.

¹⁸ Calliess/Ruffert-Blanke-Blanke, Art. 151 No. 10.

¹⁹ Streinz-Niedobitek, Art. 151 No. 46, *Schmahl*, p. 204.

²⁰ Notebook No. 9 of the communiqués and reports of the Institute of Museums, Berlin 1996.

²¹ Cf. *Kühl*, *Der internationale Leihverkehr der Museen*, Cologne, 2004.

²² *Schwarze-Sparr*, Art. 151 No. 46.

²³ COM(2003) 520 final.

of Parties should take place in order to contribute to the definition and elaboration of instruments and frameworks of co-operation at international level (regional and/or bilateral)”.

UNESCO has long taken an interest in both cultural exchanges *per se* and, more particularly, in the introduction of State indemnities; these are dealt with in a pair of recommendations, one on international exchanges of cultural property (1976) and the other on the protection of movable cultural property (1978)²⁴.

In its 1976 recommendations on international exchanges of cultural property, the UNESCO General Conference pronounced itself (in point 9 of its “Recommended Measures”) in favour of the introduction of state indemnities: “Member States should give special attention to the problem of covering the risks to which cultural property is exposed throughout the duration of loans ... and should, in particular, study the possibility of introducing government guarantee and compensation systems for the loan of objects of great value, such as those which already exist in certain countries”. Two years later, the second recommendation added certain interesting clarifications (in points 21c and 22): “within the framework of such systems and in the forms mentioned above, provide for compensation to lenders in the event of damage (...) 22. The provisions concerning governmental guarantees should not apply to cultural property which is the object of transactions for commercial purposes.”

These UNESCO recommendations are, in other words, directed to the same object as the restrictions contained in Article 151, paragraph 2, with regard to the necessity of non-commercial exchanges, but do not include other limitations. It should be noted that these recommendations are applied to “cultural property”, a term which, although coming very close to it, is not wholly synonymous with the “works of art” that are the object of this study.

A4 Consideration of cultural aspects in other fields of action – Horizontal clause

The horizontal clause in Article 151, paragraph 4, of the TEC, which states that the Community must take cultural aspects into account in its action under other provisions of the Treaty, applies by definition to areas outside the cultural domain.

Notwithstanding the vagueness of the phrase “take into account”, the clause does contain more than a simple declaration of intention²⁵.

It underlines, first of all, the importance that culture can have with regard to other Community objectives. As the CJEC demonstrated in the case of the horizontal clause on health policy²⁶, a clause of this type can effectively moderate one specific domain in relation to another. In the domain of culture, the contrary interests encountered in the framework of state indemnities are first and foremost budgetary questions. Article 151, paragraph 4, of the TEC ensures, from a legal point of view, that these are not the only arguments taken into account.

Moreover, Article 3(q) of the TEC largely determines the balance between cultural objectives and the other objectives of the TEC: contributing to the flowering of the cultures of the Member States is given the same weight as the other objectives of the Treaty.

²⁴ BT-Drucks. 8/3109, p. 7-12.

²⁵ Grabitz/Hilf-Ress/Ukrow, Art. 151 No. 70.

²⁶ Court of Justice of the European Communities, C-376/98, *Directive on tobacco advertising*, 2000, I-8419 No. 88.

A5 Contrary interests: Physical conservation of the cultural heritage

We have seen that the provisions of Article 151 of the TEC allow the Community to promote the system of state indemnities for touring exhibitions of works of art. This possibility, however, must be reconciled with the need to conserve and safeguard the common cultural heritage, as required by Article 151, paragraph 1, of the TEC.

This dilemma, which is characteristic of cultural exchanges, was set out in the third consideration of the 1978 UNESCO recommendations for the protection of movable cultural property mentioned above: "Considering that the growing desire of the public to know and appreciate the wealth of the cultural heritage, of whatever origin, has nevertheless led to an increase in all the dangers to which cultural property is exposed as a result of particularly easy access or inadequate protection, the risks inherent in transport..." and, farther on, in the General Principles (point 6), "Cultural property is liable to deterioration as a result of poor conditions of storage, exhibition, transport and environment ... which in the long run may have more serious effects than damage compromising the material security of cultural property". For this reason, museums have begun to impose a rest period for returned works of art before lending them out again, in order to avoid damaging them. Any measures adopted on the Community level must tend to preserve this balance between the promotion of exchanges and the preservation of the works.

B State indemnities and Community competition law

Up to this point we have been considering state indemnities from the cultural point of view, but they also have an economic dimension. On this level, they are subject to Article 87 of the TEC, which defines the type and extent of state aids authorised by Community law²⁷.

Article 87 of the TEC concerns all types of state aid, including aids granted in the cultural domain; this means that the state indemnities applied to exhibitions of works of art must comply with its requirements. Community subsidies, however, do not come within the scope of the provisions of TEC Article 87, insofar as they have a legal foundation in other clauses of the Treaty²⁸. Articles 87 and thereafter of the TEC therefore only apply to national indemnities provided by Member States, and not to a possible state indemnity covered by the Community.

In principle, state aids that distort competition are not compatible with the Common Market, by virtue of Article 87, paragraph 1, of the TEC. Article 87, paragraph 3, point (d), however, provides that state aids may be considered compatible with the Common Market when they are intended to promote culture and the conservation of the cultural heritage, and when they do not modify the conditions of trade and competition within the Community to a degree that is contrary to the common interest.

The first requirement, then, is to define whether a state indemnity constitutes a state aid, and if so, whether it is admissible on the basis of cultural considerations.

²⁷ For more detail on this subject, see *Kühl*. It is perhaps overly optimistic to say that these rules allow of a solution to the problem of harmonising state subsidies for culture with the Common Market. (observation made by the Spanish Delegation, 12 December 2001 "Ten years later" (reflections on article 151 of the TEC: expectations and results), 15249/01)

²⁸ *Schmahl*, p. 247.

B1 State indemnities as state aid in the sense of Article 87 of the TEC

A state indemnity constitutes a state aid in the sense of Article 87 when it is allocated by means of state resources, favours certain undertakings or certain products, distorts or threatens to distort competition and affects exchanges between Member States.

I State aid or aid granted by means of state resources

The – very vague – term of “state aid” includes both positive benefits and reductions in charges²⁹, this second category including indemnities³⁰.

The object, and the effect, of a state indemnity is to spare museums the cost of insurance premiums. The saving thus realised will differ according to the terms of the indemnity. There may be cases, for example, where the indemnity provides for a deductible that the museum has to cover, either through a commercial insurance policy or out of its own resources.

Notwithstanding these various differences, indemnities do represent a reduction in expenses in the sense of Article 87 of the TEC. The fact that the allocation of an indemnity does not necessarily involve real expenditure on the part of the state is of no consequence³¹.

In Community law, the concept of state aid includes subsidies allocated by territorial authorities³². This is of importance to Member States with a federal structure, like Germany.

II Advantages given to certain undertakings or certain products

In the light of the cultural considerations set out thus far, it may at first sight appear disconcerting that a state indemnity granted to a museum could be described as an advantage favouring certain undertakings or part of a production sector. The term ‘undertaking’ as used in Article 87 of the TEC is, however, very large, and includes all the personal, material and immaterial factors under an independent legal personality and that form an entity pursuing a long-term economic objective³³. Pursuit of an economic objective does not necessarily imply an intent to earn profits, which means that museums can also fall within the sphere of application of Article 87 of the TEC³⁴. This also applies to the museums of Member States, most of which are financed out of the public purse. Whether the museum is public or private in its formal organisation has no bearing on its legal definition as an undertaking in the sense of Article 87³⁵.

III Interference with the principles of competition

For the allocation of an indemnity to be classed as a subsidy in the sense of Article 87 of the TEC, it must be likely to have a distorting effect on competition³⁶.

²⁹ Groeben/Thiesing/Ehlermann-Mederer, Art. 92 No. 5.

³⁰ Reply of the Commission to a written question, No. 48, OJ 1963, p. 2235.

³¹ Court of Justice of the European Communities, 30.11.93, 1993 I, 6185 – Kirsammer-Hack/Sidal.

³² Idem No. 13.

³³ Court of Justice of the European Communities, 13.7.1962, 1962, 717, 750 – Mannesmann/Hohe Behörde.

³⁴ Kruse, SME 1996, 113, 116; Ress, p. 132, 135; Schmahl, p. 248; Wemmer, p. 204.

³⁵ Groeben/Thiesing/Ehlermann-Mederer, Art. 92 No. 21.

³⁶ Ress, p. 134; Koenig/Kühling, European Review of Economic Law 2000, 197, 200.

The issue here is not competition among commercial insurance companies and the interference of the Member State through its state indemnity scheme, but of competition among the museums themselves. There can be no prejudice to competition in the sense of Article 87 of the TEC unless the subsidy improves the position of the beneficiary, in this case the museum³⁷.

As a matter of fact, the existence of competition in the domain that concerns us, that of exhibitions, appears doubtful. The law of competition is based on the idea that when the conditions in which the products or services of one supplier are delivered are not satisfactory, the consumer will transfer his choice to comparable goods or services, and that nothing should distort the competition among cultural goods and services that are substitutable in this manner. It is, in other words, consumer opinion that will determine the relevant market for a relationship of competition³⁸. Now, unlike other “products”, exhibitions cannot be substituted freely one for another. If an exhibition is not held on account of excessively high insurance premiums or the lack of an indemnity, the potential visitor will not in general be able to attend a comparable exhibition instead³⁹. It is of course possible that a similar exhibition may be held in another city, or even another country, if the conditions there are more favourable. And, too, it has been evident for some time that people are prepared to travel in order to visit a museum or an exhibition. But this is still a marginal phenomenon, and one cannot extrapolate from it the existence of real competition among the major organisers of exhibitions, which could be distorted by the operation of an indemnity.

Finally, even supposing that indemnities did create a distortion among museums, certain state indemnities would in any case fall into the category of “*de minimis*” aids. This category, as established by the Commission⁴⁰, covers state aids totalling less than 100,000 euro over a three-year period, and indemnities falling into this category would in any case not be subject to the provisions of Article 87 of the TEC.

IV Impact on exchanges

As for other forms of aid, the question that must be asked is whether they are likely to affect exchanges within the Community. The deciding criterion here is exchanges between Member States, which means that aids whose effect does not go beyond the national framework must be left out of the debate⁴¹. Now, it must be admitted that the “market” for major exhibitions, if it exists at all (see observations above on the minimal substitutability of exhibitions), could well be affected by state indemnities if their operation favoured the hosting of exhibitions in one country rather than another. In such case, Community law does not require proof that

³⁷ Callies/Ruffert-Cremer, Art. 87 No. 12.

³⁸ Groeben/Thiesing/Ehlermann-Mederer, Art. 92 No. 32.

³⁹ It was in these terms that the Commission expressed its doubts about the existence of a competitor with a corresponding product to offer that could replace the experience of Halstatt, in connection with support for the “Halstatt salt mines” attraction; Koenig/Kühling, *European Review of Economic Law* 2000, 197, 200.

⁴⁰ EC Regulation 69/2000 / 12 January 2001 on the application of articles 87 and 88 of the TEC on *de minimis* aids, OJ EU 2001 No. L 10, p. 30.

⁴¹ As for example the Netherlands fund for the publication and translation of works of literature by *Ress*, GedS Grabitz, 595, 617.

exchanges have effectively been disturbed. The mere assumption of such a disturbance resulting from the allocation of such an aid is sufficient⁴².

B2 Compatibility with the Common Market, in accordance with Article 87, paragraph 3, point (d) of the TEC

Even if state indemnities granted to museums were in principle held to be aids coming within the provisions of Article 87, they might still be compatible with the Common Market insofar as they are, as provided by Article 87, paragraph 3, point (d) of the TEC, “aids intended to promote culture and the conservation of the cultural heritage, [and which] do not modify the conditions of trade and competition within the Community to a degree that is contrary to the common interest”.

I Aids intended to promote culture and the conservation of the cultural heritage

First of all, the aids granted in the form of state indemnities for museums must, in order to be legal, aim at promoting culture and the conservation of the cultural heritage.

The term “culture” in the meaning of these provisions must be understood to include those domains in which the Member States exercise their national cultural policy, namely literature, music, the plastic and performing arts, the safeguarding of the cultural heritage, national traditions, and audiovisual expressions⁴³. This, moreover, is the position of the Commission⁴⁴. Exhibitions of works of art indisputably fall within this general category.

Moreover, the term “cultural heritage” does not appear to refer to each of the individual national cultures of the Member States, but rather to the “awareness of a common foundation”⁴⁵ in the cultural domain. Loans between museums unquestionably allow visitors to become aware of this common foundation. This criterion, therefore, also tends to justify the existence of state indemnities intended to encourage such loans.

II No modification to a degree contrary to the common interest

In accordance with Article 87, paragraph 3, point (d) of the TEC, indemnities can be considered compatible with the Common Market insofar as they do not modify the conditions of trade and competition within the Community to a degree that is contrary to the common interest. This provision recapitulates the terms of Article 87, paragraph 3, point (c).

This “common interest” essentially reflects the objectives of the Community⁴⁶. In the framework of this particular study, three elements seem particularly important. First of all, both cultural aspects⁴⁷ and economic interests must also be taken into consideration, in accordance with the horizontal standard of Article 151 of the TEC. Article 151, paragraph 2,

⁴² Commission decision, OJ EU 1989 No. L 106, p. 35.

⁴³ *Ress, GedS Grabitz*, 595, 622 f.

⁴⁴ Commission, Decision 3.6.1998, National Aid, No. 3/98, No. 2 – France (film promotion); Commission, Decision 21.4.1999, National Aid No. N 4/98, No. 3 – Germany (amendment to film promotion).

⁴⁵ *Schwarze-Sparr*, Art. 151 TCE, No. 19.

⁴⁶ *Groeben/Thiesing/Ehlermann-Mederer*, Art. 92 No. 49; *Wemmer*, p. 210.

⁴⁷ *Wemmer*, p. 210.

point 3 gives the Community competence in the sphere of promoting non-commercial cultural exchanges. It is therefore reasonable to conclude that this type of exchange is in the interests of the Community. If it is clear that an exchange is not contrary to the common interest solely because it is commercial, it is by the same token evident that an interference limited to such exchanges could not, especially if justified by other Community interests, be contrary to the common interest. Finally, one must not lose sight of the fact that in Europe the cultural domain in particular is largely dependent on state subsidies, even if the degree of dependence varies from one country to another⁴⁸. These three elements, then, lead to the conclusion that, in terms of the horizontal standard enunciated in Article 151 of the TEC, a subsidy that facilitates non-commercial exchanges, only minimally affects commercial exchanges and corresponds to the common practice of the Member States cannot be contrary to the common interest. The authorisation required by Article 88, paragraph 3 of the TEC for such aids must, therefore, be granted in such cases⁴⁹.

It is reasonable, therefore, to assume that the Commission would in practice tend to look kindly upon state indemnities.

The principal conclusions that may be drawn from this rapid study of the conformity of state indemnities with Community law can be summarised as follows.

National indemnities are state aids. Assuming that they can be regarded as liable to distort competition between museums on a hypothetical exhibitions market, they could without difficulty be regarded as in conformity with the law of the treaties by virtue of the role they play in promoting culture and bringing to the fore the common European cultural heritage. In addition, they do not seem to be liable to modify exchanges to a degree contrary to the common interest.

The general framework for the action of the Community in the domain of state indemnities is expressed in the provisions of Article 151. The terms of this article prevent the Community from proceeding by way of a harmonisation of national systems. On the other hand, the principle of subsidiarity that underlies Article 151 allows the institution of a European state indemnity scheme that would complement national indemnity schemes, and to enact recommendations and rules of practice for the states. Such measures should be aimed at promoting only non-commercial exchanges, and at respecting the balance between the movement of works and their necessary preservation. The overall conclusion, then, is that Community law leaves a fair amount of room for Community action in this domain.

⁴⁸ *Ress*, p. 24.

⁴⁹ *Ress*, GedS Grabitz, 595, 622.

Proposals and conclusions

In this survey of state indemnity insurance we looked at a total of 31 European countries. From the interviews conducted in the different countries, our study of the relevant documents and the observations that emerged from a meeting of experts (see Annex VII), a number of points and problem areas have become apparent. These are summed up in the conclusions and recommendations that follow.

These mention several aspects of the system (particularly the requirements of transparency and clarity), as well as the undesirable effects of a lack of state indemnity, which hampers the movement of works of art within Europe.

These proposals take into consideration the legal constraints studied elsewhere in this report (see part V): impossibility of harmonising state indemnity systems on the European level, and possible recourse to recommendations and to a European state indemnity that respects the principle of subsidiarity.

A Proposals relating to legislation

A1 Existence, availability and intelligibility of legal regulations

The existence of clearly defined and understandable regulations concerning the state indemnity system operating in certain countries can be considered as a positive fact, in that it broadens the possibilities for loans of works of art for exhibitions organised between European museums. In some countries, the state indemnity system would be more readily used if the regulations were sufficiently elaborated so as to make the system understandable. Attractive website presentations, brochures and leaflets can also be helpful in improving comprehension of the system. An official booklet, usable by lenders and borrowers alike and explaining the principle of the indemnity clearly and in detail, would certainly encourage use of the system.

If the system is to be used, it must be clearly understood by all the parties concerned. Since most of the touring exhibitions covered by state indemnities cross national borders and are by nature trans-European, the text of each set of national regulations may need to be understood throughout the European Union, and should therefore be available in one or more other European languages.

A2 Harmonisation of terminology

State indemnity insurance is by its very nature a subject that can be difficult to understand. A uniform terminology would facilitate the comprehension and use of such systems.

This would require:

- a common definition for the terms used by different states in their documents,
- the consistent usage of the same technical terms for the same subject matter,
- and, for a better comprehension of national indemnities in Europe (and better translations of related documents), a multilingual glossary of technical terms, with definitions, and their equivalents in all European Union languages.

A3 National information centre on the state indemnity scheme in each country

A national information centre in each country would be an invaluable aid to the comprehension and use of state indemnity systems. These centres would:

- have full documentation and information about the state indemnity system operating in each European country, in order to allow informed discussion of any proposed use of state indemnity schemes,
- be in charge of explaining and promoting their own national indemnity systems, both at home and abroad, through the development of appropriate material, the organisation of conferences of experts, and the like.

A4 Agreements on the choice of applicable law and competent jurisdiction - Arbitration

Agreement on the applicable law and competent jurisdiction is an aspect of indemnity regulations that is often neglected.

In principle, the parties to a loan contract are free to choose the law that will be applicable to it. In general, each party initially insists on the application of his “own” law, not because it is necessarily more advantageous to him (this is not generally something that can be assessed in advance), but rather because it is more familiar. There may, however, be restrictions on the options available: unlike simple loans, which are always private contracts, state indemnities are so strongly subject to public law that in certain cases museums cannot accept the application of any other national law. In practice, it is generally the domicile of the insurer that determines the law applicable to the relation between insurer and beneficiary: for example, French law would apply to a French state indemnity (cf. for the EU area, Article 4, paragraph 2 of the 19/6/1980 Convention on the Law Applicable to Contractual Obligations).

This can cause problems in situations where a lender will not agree to make an object available to a museum unless “his” law applies.

In most cases, agreement on the applicable law also determines the competent jurisdiction in case of dispute. This can also lead to problems, since a lender will often hesitate to supply a collector’s item if he knows that, in case of dispute, he will have to bring an action in a foreign court.

In a situation where, as is the case with loans of works of art, the parties know one another and have an interest in continuing to work together, arbitration can often be a good solution. Arbitration can also be implemented on the international level (cf. the 10 June 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards). Such

proceedings could, for example, be entrusted to the International Court of Arbitration operated by the International Chamber of Commerce in Paris. If the parties should not wish to refer the matter to arbitration, another possibility would be to appoint an arbitrator-advocate to clarify the critical points in the proceedings. Like an arbitrator, an arbitrator-advocate would be appointed by both parties and could, for example, determine the amount of damage or loss of value.

B Improving the movement of works of art

B1 Facilities report

We know that lenders need to be convinced that the works they entrust for a space of time to another museum will be treated in the same way as they would be if they remained in their place of origin. For this reason, it seems to us essential that each borrower should be able to provide the lender with a detailed facilities report supplying the requisite technical, surveillance and security data (characteristics of the building, security systems, intruder and fire detection systems, air conditioning, lighting, reception, storage and transportation inside the building, hanging systems) (cf. sample facilities report in Annex VI).

If the borrowing institution has not already drawn up such a report, then it must certainly do so. It must also make sure that the exhibition venue meets the stated specifications, and must without fail take steps to remedy the situation if there should be any divergence.

One way of encouraging exchanges of works between European countries, and particularly with the new Member States, would be to promote the development of a standard facilities report for all European countries. A group of experts could be set up to work out a framework of high-level common standards, which, while non-compulsory, museums would be encouraged to comply with for the sake of their reputation vis-à-vis lenders. These standards would apply to permanent collections as well as to temporary exhibitions, and could in addition serve as a basis for providing the same level of protection for the whole of the European heritage. Furthermore, museum security, which is always a primary consideration for lenders, could be improved and enhanced by having European experts regularly inspect museums for compliance with their facilities reports and issue certificates of approval where warranted.

B2 Immunity from seizure

One issue that is very relevant to the mobility of works of art within Europe, even though it is outside the focus of this survey, is that of immunity from seizure. Claims by former owners seeking to recover cultural property that has been lost or confiscated for a variety of reasons are certainly not unknown. It may well happen that a person, whether a former owner or his heir(s), sees a work of art at an exhibition that he believes to be his lawful property and institutes legal proceedings to recover it. In order to avoid such situations, exhibition organisers are required to carry out in-depth research into the provenance of the exhibits. All

museums do so, and have been doing so for years; but they can never be one hundred percent certain that their information is both complete and reliable. It therefore seems important to us that every country should enact legislation guaranteeing immunity from seizure for borrowed works while they are in that country's territory. At present very few European countries have such a law on their books. Any such extension of the mechanisms of immunity from seizure would need to be preceded by a legal study designed to ensure that the mechanisms instituted were compatible with the European Convention on Human Rights and Fundamental Freedoms, and particularly with the clauses guaranteeing the right to property and the right to a fair trial.

Ideally, immunity from seizure ought to apply equally to works belonging to museums and public institutions and to private lenders, as is the case in the United States and in Germany. In France, by contrast, works belonging to private lenders are excluded.

In our opinion, the enactment of acts or decrees guaranteeing immunity from seizure in all European countries is an essential step towards facilitating temporary exhibitions.

C Possible actions on the European level

CI Establishing an indemnity scheme in every European country

The potential offered by the system of state indemnity schemes cannot be fully utilised unless the cultural authorities in each country accept the guarantees offered by the others. Museums would be more likely to accept and use state indemnities if their governments took a lead in this direction.

Comparative analysis has shown that, in countries with a state indemnity system, the average number of claims against this provision, by country and by year, is six. The most frequent users of the system are Finland, Sweden and the United Kingdom.

In more than twenty years of existence, the indemnity schemes offered by the United States and the United Kingdom have never been required to cover any but minor claims, while France's scheme, which has been in place for ten years, has never had a single claim against it. In the Netherlands there has never been a single case in which compensation has had to be paid. Finland has only recorded one case since 1986. The risk of such a mechanism to the public purse, therefore, seems minimal. To correlate this with the question of security and with the facilities reports mentioned above, this minimal incidence of damage is largely the consequence of the safety and security of exhibition venues, which means that the standardisation of facilities reports proposed earlier could be a powerful instrument for the expansion of state indemnity schemes, since countries would be more inclined to enact such a system if they were assured that its impact on their finances would be limited.

This is, in our opinion, an opportune time to recommend that all the members of the European Union set up state indemnity schemes. This would permit significant economies to be made in relation to the organisation of exhibitions, and would encourage loans of works of art within the Union. But the differences that exist between national systems sometimes make it difficult for lenders from one country to accept the scheme offered by another. In order to revitalise

this situation, Member States could try to achieve some convergence in the terms and conditions of their indemnity systems, or at least attempt to define the terms and conditions of the minimum indemnity they undertake to provide. If necessary, they could be encouraged to do so by the European Union, perhaps through a recommendation or a set of guidelines or a code of practice. In the long term, such convergence would mean that no Member State would, as a lender, reject the indemnity scheme offered by another. Alongside of convergence of the conditions of state indemnity schemes, it would also be sensible for countries to exchange information about the mechanisms in place for the payment of compensation when required. Museums would be more inclined to accept state indemnities if they knew more about the practical aspects of compensation (procedures, jurisdiction, budget).

In our opinion, if we are to remain within the spirit of Article 151 of the Treaty on European Union, the wisest and most urgent measure at present is for all European countries to set up and adopt a national state indemnity scheme.

C2 Recommendations to Member States

The Community has the right to put forward recommendations to the Member States, whether as alternatives or additions to their national regimes. It should, however, be pointed out that Member States can also act upon their own initiative with regard to the points set out below, without requiring a recommendation from the European Union.

I. Non-insurance

In several countries, non-insurance mechanisms have fostered co-operation among museums belonging to public authorities.

This system could be extended to and applied on the European level. With the object of promoting the movement of works of art within Europe, museums and public institutions in different countries could be encouraged to conclude reciprocal agreements to waive the coverage of certain risks. For example, in the case of damage, they could cover restoration costs only and waive depreciation, and/or not insure works while they were at the exhibition venue. Since agreements of this kind are based on confidence and equity, they could only be concluded between structures offering a similar degree of protection for the works in their charge and engaging in exchanges of similar importance in both directions. But even if such agreements were limited in number, the very fact of their conclusion would be of tremendous symbolic importance.

II. Abandonment of obligatory insurance practices by the lender

One specific problem that has to be addressed stems from the fact that some lenders demand that the works of art they lend be insured by their own ordinary insurer. This creates a legal problem when the borrower is a public institution subject to the rules of public procurement. In addition, the exclusivity enjoyed by the lender's insurer limits the borrower's ability to negotiate an insurance premium, which leads to exorbitant premiums, while lenders

frequently refuse a state indemnity scheme on account of the exclusivity granted to their own insurers. This type of system should, therefore, be discouraged.

III. Moderation agreement

Another point that museums should be encouraged to think about in connection with the movement of works of art has to do with how these are valued for insurance purposes. It would be sensible to set up moderation agreements, especially between public institutions. Since these institutions pursue objectives that are patrimonial rather than commercial, they should be willing to accept that insurance values do not have to keep pace with developments on the art market. Nor would moderation agreements benefit only museums not covered by a state indemnity scheme, since even those that do are often refused coverage under such schemes because of excessively high valuations.

State indemnity schemes are therefore only viable if lender and borrower agree to refuse overestimations. The part played by the lender in this case is extremely important, for it cannot be denied that state indemnities can tend to the opposite result: if the check of a high insurance premium is removed, lenders may see overestimation as the only means of securing liability. The lender's confidence in the conditions in which the works of art will be transported and exhibited is therefore the primary condition for any moderation of insurance valuations.

C3 European indemnity

It would be sensible to set up a European indemnity scheme, which would be of considerable assistance in helping the new members of the European Union take their place on the international exhibitions circuit. Such a system would encourage them to organise exhibitions, even though at the moment they hesitate to set up a state indemnity scheme. We must not, however, underestimate the difficulties of such a project. First of all, the indemnity system is a priori incompatible with the way the EC budget operates. The EC budget is voted annually, and has to balance (total income has to be the same as total expenditure). The sums included in the budget for any given year are supposed to be pledged during the course of that year.

Allowing for this reservation, a European state indemnity system could, in theory at least, be organised in one of two ways: either in the form of a fund available to national indemnity schemes for reinsurance, or in the form of a wholly autonomous system.

In the first case, the Community budget could fund a reinsurance mechanism endorsing the national indemnity schemes of its members. Assuming that the national mechanism of one of these countries was called into action, the Community reinsurance fund would cover all or part of the compensation, according to the details of the specific scheme. A fund of this type would be risky, in that it could encourage states to change the terms of their existing indemnity schemes to take advantage of the European system. In this way the Community could see itself accused of influencing national cultural policy, which would be against the (simple) "encouragement" specified in Article 151, paragraph 2, of the TEC. Such a mechanism would therefore have to be carefully weighted in order to avoid this criticism.

In the second case, an autonomous Community indemnity system could be set up, which would make up for the absence of a state indemnity in certain countries or offset the deficits of existing national systems. This indemnity would operate on the level of the European Union as a whole, in a variety of ways: reinsurance of state indemnities above a certain sum, coverage of deductibles in certain indemnities, insurance of long-term loans between European museums ...

However, the institution of a supplementary indemnity entails the risk of creating a new bureaucracy in addition to those that already exist. In setting up such a system, therefore, care must be taken to make use of existing structures. In order to minimise the administrative burden, it would seem sensible, at first glance, for negotiating partners within participating museums to retain their administrative role on the level of the Member States and to consult the competent Community institutions in the framework of the indemnity procedure.

C4 Community budget support for the organisation of European exhibitions

To help new members join the exhibition circuit, selected exhibition projects could well receive European Community funding during a transitional period, as is already the case with the Culture 2000 programme⁵⁰. One of the criteria for such budget support would be that each project be hosted by a new Member State. Budget support could be usefully allocated to covering insurance costs, which represent an obstacle to the inclusion of these countries in the major exhibitions circuit.

It is apparent from this survey that the question of the cost of insuring works of art is crucial to any consideration of the circulation of works of art in Europe. The development and reinforcement of state indemnity mechanisms seems to be a very effective way to improve this movement for the general purpose of advancing the broadest possible knowledge and dissemination of Europe's shared cultural heritage. Such support would have to take into account the provisions of Article 151 of the Treaty, which allows the Community to act by recommendation, through budgetary support or with the creation of a European indemnity system to complement national schemes.

This study also shows that state indemnity mechanisms cannot be considered in isolation, and that they can only operate in a favourable context that will ensure lender acceptance. State indemnity systems, it is fair to say, rest on a set of bonds of confidence: the confidence of the guarantor state in the security of the facilities and practices of the beneficiary institutions; the confidence of the lenders in these same institutions for the same reasons; the confidence of the lenders in the solvency of the guarantor state and the simplicity of their administrative procedures in case of claim. The question of the security of the works of art is thus central and fundamental to the debate on state indemnities. This is why we recommend that the Community take action in this domain as well, for it is one of the principal elements that will determine the success or failure of any efforts that may be deployed in relation to state indemnities themselves.

⁵⁰ European Council and Parliament Decision n° 508/2000/CE, 14 February 2000, establishing the Culture 2000 programme. Official Journal of the European Communities L 63, 10/3/2000.

It is now up to the institutions of the European Union to study these observations and conclusions, and to draw whatever lessons they may find useful for cultural development within Europe.